

**THE UNIVERSITY
OF ILLINOIS
LIBRARY**

385.731

Un 3int
v. 93


**WITHDRAWN
University of
Illinois Library
at Urbana-Champaign**

THE LIBRARY OF

JAN 15 1926

UNIVERSITY OF ILLINOIS

WITHDRAWN
University of
Illinois Library
at Urbana-Champaign



Digitized by the Internet Archive
in 2013

LIBRARY
UNIVERSITY OF ILLINOIS
URBANA

INTERSTATE COMMERCE COMMISSION REPORTS

VOLUME 93

DECISIONS OF THE

INTERSTATE COMMERCE COMMISSION

OF THE UNITED STATES

INTERSTATE COMMERCE COMMISSION

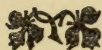
OCTOBER-DECEMBER, 1924

THE LIBRARY OF THE

JAN 15 1926

UNIVERSITY OF IL

REPORTED BY THE COMMISSION



WASHINGTON
GOVERNMENT PRINTING OFFICE
1925

INTERSTATE COMMERCE COMMISSION

HENRY C. HALL, *Chairman*

CHARLES C. McCHORD.

JOHN J. ESCH.

BALTHASAR H. MEYER.

JOHNSTON B. CAMPBELL.

CLYDE B. AITCHISON.

ERNEST I. LEWIS.

JOSEPH B. EASTMAN.

FREDERICK I. COX.

MARK W. POTTER.

FRANK McMANAMY.

GEORGE B. MCGINTY, *Secretary*

385.731
Ln 3int
V.93

Econ,

LIBRARY
UNIVERSITY OF ILLINOIS
URBANA

TABLE OF CASES REPORTED

CONTENTS

	Page
Members of the commission.....	II
Table of cases reported.....	V
Table of cases cited.....	XIX
Opinions of the commission.....	1
Cases disposed of without printed report, with table.....	755
Supplemental reparation orders.....	759
Informal reparation claims.....	763
Table of commodities.....	765
Table of localities.....	775
Index digest.....	799
93 I. C. C.	III

593870

LIBRARY
UNIVERSITY OF ILLINOIS
URBANA

1873
JAN 15
V. 10

ADDITIONAL COPIES
OF THIS PUBLICATION MAY BE PROCURED FROM
THE SUPERINTENDENT OF DOCUMENTS
GOVERNMENT PRINTING OFFICE
WASHINGTON, D. C.

AT
\$2.25 PER COPY

IV

93 I. C. C.

52825

TABLE OF CASES REPORTED

[NOTE.—“Et al.” in parentheses indicates other complainants or defendants, as in subnumbers or other cases, reported in same opinion.]

Abilene & Southern Ry. Co.:	Page
Burnett-Yount Horse & Mule Co. <i>v</i>	479
Oklahoma Portland Cement Co. <i>v</i>	605
Akron, Canton & Youngstown Ry. Co., Jackson Traffic Bureau <i>v</i>	339
Alabama & Vicksburg Ry. Co.:	
Jackson Traffic Bureau <i>v</i>	55
Jackson Traffic Bureau, for Case-Teel Co. <i>v</i>	322
Mississippi Railroad Commission <i>v</i>	435
Stuttgart Rice Mill Co. <i>v</i>	517
Wichita Motors Co. <i>v</i>	635
Alexandria & Western Ry. Co., Chamber of Commerce of Kansas City, Mo., <i>v</i>	479
Allowances of Mileage for Mississippi River Crossings	462
American Asso. of Nurserymen <i>v</i> . American Ry. Exp. Co.	166
American Bridge Co. <i>v</i> . U. R. R. Co.	637
American Hide & Leather Co. <i>v</i> . Director General, as Agent ..	265
American Hominy Co. <i>v</i> . Director General, as Agent	256
American Railway Express Co.:	
American Asso. of Nurserymen <i>v</i>	166
Dawson Produce Co. <i>v</i>	390
Fairmont Creamery Co. <i>v</i>	684
Gentile Co. <i>v</i>	76
American Steel Export Co. <i>v</i> . Director General, as Agent	235
Anderson Commission Co. <i>v</i> . C., R. I. & P. Ry. Co.	241
Ann Arbor R. R. Co., Parlor Frame Manufacturers' Asso. <i>v</i> ..	506
Arcade & Attica R. R. Corp., Houston Cotton Exchange & Board of Trade <i>v</i>	268
Arizona Eastern R. R. Co., Miami Copper Co. <i>v</i>	221
Armour & Co. <i>v</i> . L. & N. R. R. Co.	360
Armour Fertilizer Works <i>v</i> . S. Ry. Co.	186
Armour Grain Co. <i>v</i> . A., T. & S. F. Ry. Co.	124
Assigned Cars for Bituminous Coal Mines	701

Atchison, Topeka & Santa Fe Ry. Co.:	Page
Armour Grain Co. <i>v.</i>	124
Dewey Portland Cement Co. <i>v.</i>	311
Hansen-Peterson Co. <i>v.</i>	596
Nebraska Bridge Supply & Lumber Co. <i>v.</i>	301
Nebraska Cement Co. <i>v.</i>	163
Oklahoma Portland Cement Co. <i>v.</i>	203
State Corporation Commission of New Mexico <i>v.</i>	43
Texas Co. <i>v.</i>	691
Athletic Mining & Smelting Co. <i>v.</i> K. C. S. Ry. Co.	119
Atlanta & West Point R. R. Co., International Agricultural Corp. <i>v.</i>	189
Atlanta, Birmingham & Atlantic Ry. Co., Omaha Chamber of Commerce Traffic Bureau for Trimble Bros. (Inc.) <i>v.</i>	583
Atlantic Coast Line R. R. Co., Devine & Asselstine <i>v.</i>	174
Baltimore & Ohio R. R. Co.:	
Dyer Fruit Box Mfg. Co. <i>v.</i>	386
Jackson Traffic Bureau, for Cabbell-Irby Co., <i>v.</i>	342
Lange & Crist Box & Lumber Co. <i>v.</i>	207
National Food Packers Traffic Asso. (et al.) <i>v.</i>	400
Norwich Pharmacal Co. <i>v.</i>	246
Sisal Sales Corp. <i>v.</i>	297
United Cycle & Supply Co. <i>v.</i>	689
Barnett Oil & Gas Co. <i>v.</i> Director General, as Agent (L. & N. R. R. Co.)	85
Becker County, Minn., <i>v.</i> Director General, as Agent	368
Bergstrom Paper Co. <i>v.</i> Director General, as Agent	591
Blasting Powder, Exceptions to Official Classification Rating	451
Board of Commerce of Wichita <i>v.</i> Director General, as Agent (A. & W. Ry. Co.)	479
Board of County Commissioners, Crawford County, Kans., <i>v.</i> St. L.-S. F. Ry. Co.	502
Boston & Albany R. R. Co., Massachusetts Oil Refining Co. <i>v.</i>	110
Bottles from Chattanooga, Tenn., to Memphis, Tenn.	317
Bradley & Woertz <i>v.</i> N., C. & St. L. Ry.	512
Brick and Clay Products between Western Trunk Line Points	81
Brick between Oklahoma and Texas Points	210
Buffalo Brake Beam Co. <i>v.</i> S. B. Ry. Co.	637
Burnett-Yount Horse & Mule Co. <i>v.</i> A. & S. Ry. Co.	479
Cabbell-Irby Co., Jackson Traffic Bureau for, <i>v.</i> B. & O. R. R. Co.	342
California Cotton & Factorage Co. <i>v.</i> Director General, as Agent (C. S. Ry. Co.)	260
California Rand Silver (Inc.) <i>v.</i> C. & W. Ry. Co.	197

	Page
Campbell Construction Co. <i>v.</i> L. C. & S. E. Ry. Co.	99
Cancellation Rule for Constructing Combination Rates on Lumber between Southern Points and Ohio and Mississippi River Crossings.....	614
Carboys, Returned Empty, in Western Classification Territory ..	672
Carpenter <i>v.</i> C. V. Ry. Co.....	309
Case-Teel Co., Jackson Traffic Bureau for, <i>v.</i> A. & V. Ry. Co ..	322
Cement, Fertilizers, and Salt at South Atlantic and Gulf Ports, Handling Charges.....	640
Cement Plaster from Pyramid and Sweetwater, Tex., to St. Louis Southwestern Ry. Stations in Arkansas, Illinois, and Missouri.....	315
Central New England Ry. Co., Flory Milling Co. <i>v.</i>	129
Central of Georgia Ry. Co., Gentile Bros. Co. <i>v.</i>	328
Central R. R. Co. of New Jersey:	
Huber (Inc.) <i>v.</i>	539
Somerville Iron Works <i>v.</i>	39
Central Vermont Ry. Co., Carpenter <i>v.</i>	309
Chamber of Commerce of—	
Kansas City, Mo., <i>v.</i> A. & W. Ry. Co.	479
La Crosse, Wis., Traffic Bureau of, <i>v.</i> Director General, as Agent (B. & O. R. R. Co.).....	602
Omaha, Traffic Bureau, for Trimble Bros. (Inc.) <i>v.</i> A., B. & A. Ry. Co.	583
Charges for Wharfage, Handling, Storage, and Other Acces- sorial Services at South Atlantic and Gulf Ports	609
Chattanooga Bottle & Glass Mfg. Co. <i>v.</i> S. Ry. Co.....	71
Chesapeake & Ohio Ry. Co., Peytona Lumber Co. <i>v.</i>	363
Chevrolet Motor Co. of California <i>v.</i> Director General, as Agent (A., T. & S. F. Ry. Co.)	544
Chicago & Eastern Illinois Ry. Co., Great Western Paper Co., <i>v.</i>	95
Chicago & North Western Ry. Co., Shotwell Mfg. Co. <i>v.</i>	587
Chicago, Burlington & Quincy R. R. Co.:	
Cullum & Boren Co. <i>v.</i>	354
Haarman Vinegar & Pickle Co. <i>v.</i>	251
Western Stoneware Co. <i>v.</i>	143
Chicago Great Western R. R. Co., News Corp. <i>v.</i>	381
Chicago, Milwaukee & St. Paul Ry. Co.:	
Hayward Bros. Shoe Co. <i>v.</i>	243
Nelson-Kirkwood, Trustee for William R. Nelson Estate <i>v.</i> ..	607
Stahlberg, Doing Business as Winters Metallic Paint Co. <i>v.</i> ..	427
Vye Grain Co. (et al.) <i>v.</i>	411

Chicago, Rock Island & Pacific Ry. Co.:	Page
Anderson Commission Co. <i>v.</i>	241
News Corp. <i>v.</i>	381
Chicago, Terre Haute & Southeastern Ry. Co., Wright & Wimmer (et al.) <i>v.</i>	183
Christie & Eastern Ry. Co. <i>v.</i> K. C. S. Ry. Co.	675
Clay Products between Western Trunk Line Points	81
Cleveland Akron Bag Co. <i>v.</i> W. & L. E. Ry. Co.	694
Cleveland, Cincinnati, Chicago & St. Louis Ry. Co.:	
Lafayette Box Board & Paper Co. <i>v.</i>	579
Milne Lumber Co. <i>v.</i>	661
Rutenber Electric Co. <i>v.</i>	541
Coal from Chesapeake & Ohio Ry. Stations in West Virginia.	423
Coastwise Lumber & Supply Co. <i>v.</i> P. R. R. Co.	288
Coke from Kentucky, Tennessee, and Virginia to Cincinnati, Ohio, group	572
Colorado & Wyoming Ry. Co., California Rand Silver (Inc.) <i>v.</i>	197
Combination Rates on Lumber between Southern Points and Ohio and Mississippi River Crossings, Cancellation Rule for Constructing	614
Combination Rule on Lumber from Chicago and Ohio and Mississippi River Crossings to C. F. A. Territory, etc.	279
Commodity Rates from Southwestern Points	394
Consolidated Coal Co. of St. Louis <i>v.</i> Director General, as Agent	53
Construction and Repair of Railway Equipment, Erie R. Co.	646
Continental File Co. <i>v.</i> P., C., C. & St. L. R. R. Co.	373
Corporation Commission of New Mexico <i>v.</i> A., T. & S. F. Ry. Co.	43
Cotton <i>v.</i> M. & R. R. Ry. Co.	275
Cotton, Cotton Linters, and Regins from Ohio and Mississippi River Crossings to Eastern Cities	453
Cotton Exchange & Board of Trade of Houston <i>v.</i> A. & A. R. R. Corp.	268
County Commissioners, Crawford County, Kans., <i>v.</i> St. L.-S. F. Ry. Co.	502
County of Becker, Minn., <i>v.</i> Director General, as Agent.	368
Crawford County, Kans., Board of County Commissioners <i>v.</i> St. L.-S. F. Ry. Co.	502
Cullum & Boren Co. <i>v.</i> C., B. & Q. R. R. Co.	354
Dawson Produce Co. <i>v.</i> American Ry. Exp. Co.	390
Definition of Term "Handling" at Virginia, South Atlantic, and Gulf Ports	640

	Page
Delaware, Lackawanna & Western R. R. Co., Levene's Sons <i>v.</i>	103, 344
Delta Beet Sugar Corp. <i>v.</i> Director General, as Agent	547, 551
Devereaux Grain Co. <i>v.</i> C., M. & St. P. Ry. Co.	411
Devine & Asselstine <i>v.</i> A. C. L. R. R. Co.	174
Dewey Portland Cement Co. <i>v.</i> A., T. & S. F. Ry. Co.	311
Dickerson <i>v.</i> Director General, as Agent (Camas Prairie R. R. Co.)	304
Director General, as Agent:	
American Hide & Leather Co. <i>v.</i>	265
American Hominy Co. <i>v.</i>	256
American Steel Export Co. <i>v.</i>	235
Bergstrom Paper Co. <i>v.</i>	591
Consolidated Coal Co. of St. Louis <i>v.</i>	53
County of Becker, Minn., <i>v.</i>	368
Delta Beet Sugar Corp. <i>v.</i>	547, 551
Forrester-Nace Box Co. <i>v.</i>	665
General Chemical Co. <i>v.</i>	193
Liggett & Myers Tobacco Co. <i>v.</i>	61
Pacific Adjustment Co. <i>v.</i>	50
Royal Milling Co. <i>v.</i>	377
Seaman Paper Co. <i>v.</i>	139
Walsh & Wiedener Boiler Co. <i>v.</i>	1
Worth Steel Co. <i>v.</i>	37
Director General, as Agent—	
(A. & S. Ry. Co.), Texas Livestock Shippers Protective League <i>v.</i>	479
(A. & W. Ry. Co.), Wichita Board of Commerce <i>v.</i>	479
(A. A. R. R. Co.), Indian Packing Corp. <i>v.</i>	400
(A., T. & S. F. Ry. Co.):	
Chevrolet Motor Co. of California <i>v.</i>	544
Kaw River Sand & Material Co. <i>v.</i>	346
(B. & O. R. R. Co.):	
Minnesota & Ontario Paper Co. <i>v.</i>	105
New England Drawn Steel Co. <i>v.</i>	171
Pressed Steel Car Co. <i>v.</i>	224
Traffic Bureau, Chamber of Commerce, La Crosse, Wis.	602
(C. S. Ry. Co.), California Cotton & Factorage Co. <i>v.</i>	260
(Camas Prairie R. R. Co.), Dickerson <i>v.</i>	304
(C. & N. W. Ry. Co.):	
Minnesota & Ontario Paper Co. <i>v.</i>	139
Sexauer & Son <i>v.</i>	687
(L. A. & S. L. R. R. Co.), Southwestern Shipbuilding Co. <i>v.</i>	337

Director General, as Agent—Continued.	Page
(L. & N. R. R. Co.), Barnett Oil & Gas Co. <i>v.</i>	85
(N., C. & St. L. Ry.), Hudson Mule Co. <i>v.</i>	325
(O. S. L. R. R. Co.), Standard Oil Co. (California) <i>v.</i>	278
(P. R. R. Co.), New York Stable Manure Co. <i>v.</i>	349
(S. P. Co.), Universal Oil Co. <i>v.</i>	237
(S. Ry. Co.), Standard Lumber Co. <i>v.</i>	58
Distribution among Coal Mines of Privately Owned Cars and Cars for Railroad Fuel	701
Durham Mfg. Co. <i>v.</i> N. & A. Ry. Co.	271
Dyer Fruit Box Mfg. Co. <i>v.</i> B. & O. R. R. Co.	386
Eastbound Transcontinental Rates on Insulators	282
Edwards Construction Co. <i>v.</i> J., L. C. & E. R. R. Co.	370
Equity Union Elevator Co. <i>v.</i> M. W. Ry. Co.	151
Erie R. R. Co., Construction and Repair of Railway Equip- ment	646
Exceptions to Official Classification Rating on Blasting Powder	451
Fairmont Creamery Co. <i>v.</i> American Ry. Exp. Co.	684
Farmers Elevator Co. <i>v.</i> M. E. Ry. Co.	151
Fertilizers and Salt at South Atlantic and Gulf Ports, Hand- ling Charges	640
Fletcher-Wilson Coffee Co. <i>v.</i> L. & N. R. R. Co.	555
Flory Milling Co. <i>v.</i> C. N. E. Ry. Co.	129
Flowers & Stell <i>v.</i> N. S. R. R. Co.	388
Forrester-Nace Box Co. <i>v.</i> Director General, as Agent	665
Fourth Section Applications:	
No. 461, etc.	479
No. 1530	328
No. 2061	339
Fuller & Co. <i>v.</i> S. P. Co.	154
General Chemical Co. <i>v.</i> Director General, as Agent	193
Gentile Bros. Co. <i>v.</i> C. of G. Ry. Co.	328
Gentile Co. <i>v.</i> Am. Ry. Exp. Co.	76
Gilmore Co. <i>v.</i> P. E. Ry. Co. (Director General, as Agent) ...	357
Glass Bottles from Chattanooga, Tenn., to Memphis, Tenn. ..	317
Glass Container Asso. of America <i>v.</i> B. & O. R. R. Co.	400
Goodpasture <i>v.</i> N., C. & St. L. Ry.	65
Great Western Paper Co. <i>v.</i> C. & E. I. Ry. Co.	95
Gulf Coast Citrus Exchange <i>v.</i> L. & N. R. R. Co.	432
Haarman Vinegar & Pickle Co. <i>v.</i> C., B. & Q. R. R. Co.	251
Hale-Halsell Co. <i>v.</i> K., O. & G. Ry. Co.	205
"Handling" at Virginia, South Atlantic, and Gulf Ports, Definition of Term	640

Handling Charges on Cement, Fertilizers, and Salt at South Atlantic and Gulf Ports	640
Handling, Storage, Wharfage, and Other Accessorial Services at South Atlantic and Gulf Ports, Charges for	609
Hansen-Peterson Co. <i>v.</i> A., T. & S. F. Ry. Co.	596
Hawkeye Fuel Co. <i>v.</i> S. & E. Ry. & Power Co.	157
Hayward Bros. Shoe Co. <i>v.</i> C., M. & St. P. Ry. Co.	243
Helena Traffic Bureau <i>v.</i> M. P. R. R. Co.	456
Home Ice & Coal Co. <i>v.</i> C., T. H. & S. E. Ry. Co.	183
Horse and Mule Rates in the Southwest, 1924	479
Horses and Mules from Kansas City, Mo., and Wichita, Kans., to New Orleans, La., Memphis, Tenn., and Other Points.	479
Houston Cotton Exchange & Board of Trade <i>v.</i> A. & A. R. R. Corp.	268
Huber (Inc.) <i>v.</i> C. R. R. Co. of N. J.	539
Hudson Mule Co. <i>v.</i> L. & N. R. R. Co. (Director General, as Agent (et al.)	325
Humble Oil & Refining Co. <i>v.</i> N. Y. C. R. R. Co.	331
Hyman-Michaels Co. <i>v.</i> P. R. R. Co.	637
Imported Wool from Boston and New York to La Porte and Mishawaka, Ind.	26
Indian Packing Corp. <i>v.</i> Director General, as Agent (A. A. R. R. Co.)	400
Insulators, Eastbound Transcontinental Rates	282
Intermediate Routing via North Dakota Junctions on Transcontinental Traffic	411
Intermediate Switching Charges at Peoria and Pekin, Ill.	3
International Agricultural Corp. <i>v.</i> A. & W. P. R. R. Co.	189
Iron and Steel Articles in Mixed Carloads to Points in Southwest	31
Iron and Steel between New Jersey and New England Points.	499
Jackson Traffic Bureau <i>v.</i> :	
A., C. & Y. Ry. Co.	339
A. & V. Ry. Co.	55
Jackson Traffic Bureau, for—	
Cabbell-Irby Co. <i>v.</i> B. & O. R. R. Co.	342
Case-Teel Co. <i>v.</i> A. & V. Ry. Co.	322
Jones <i>v.</i> P. R. R. Co.	697
Jones & Laughlin Steel Co. <i>v.</i> P. & L. E. R. R. Co. (Director General, as Agent)	637
Jonesboro, Lake City & Eastern R. R. Co., Edwards Construction Co. <i>v.</i>	370
Junk, in Mixed Carloads, in Western Trunk Line Territory ..	263

	Page
Kansas City Mo., Chamber of Commerce <i>v.</i> A. & W. Ry. Co.	479
Kansas City Southern Ry. Co.:	
Athletic Mining & Smelting Co. <i>v.</i>	119
Christie & Eastern Ry. Co. <i>v.</i>	675
Kansas, Oklahoma & Gulf Ry. Co., Hale-Halsell Co. <i>v.</i>	205
Kaw River Sand & Material Co. <i>v.</i> Director General, as Agent (A., T. & S. F. Ry. Co.)	346
Knauff & Esterbrook <i>v.</i> N. & S. S. Ry. Co.	637
Lackawanna Bridge Co. <i>v.</i> S. B. Ry. Co.	637
La Crosse & Southeastern Ry. Co., Campbell Construction Co. <i>v.</i>	99
La Crosse, Wis., Chamber of Commerce Traffic Bureau <i>v.</i> Director General, as Agent (B. & O. R. R. Co.)	602
Lafayette Box Board & Paper Co. <i>v.</i> C., C., C. & St. L. Ry. Co.	579
Lange & Crist Box & Lumber Co. <i>v.</i> B. & O. R. R. Co.	207
Leake & Goodlett <i>v.</i> St. L.-S. F. Ry. Co.	73
Lee Farms Co. <i>v.</i> L. & N. R. R. Co.	699
Levene's Sons <i>v.</i> D., L. & W. R. R. Co.	103, 344
Liggett & Myers Tobacco Co. <i>v.</i> Director General, as Agent..	61
Lime from Eastern Trunk-Line Points to Pittsburgh, Pa., Youngstown, Ohio, and Related Points	617
Linters, Cotton, and Regins from Ohio and Mississippi River Crossings to Eastern Cities	453
Livestock, Restrictions in the Combination Rule	458
Louisville & Nashville R. R. Co.:	
Armour & Co. <i>v.</i>	360
Fletcher-Wilson Coffee Co. <i>v.</i>	555
Gulf Coast Citrus Exchange <i>v.</i>	432
Lee Farms Co. <i>v.</i>	699
Louisville Cooperage Co. <i>v.</i>	593
Louisville & Nashville R. R. Co. (Director General, as Agent), Hudson Mule Co. <i>v.</i>	325
Louisville Cooperage Co. <i>v.</i> L. & N. R. R. Co.	593
Lumber and Shingles from North Pacific Coast to Southern Points	501
Lumber between Southern Points and Ohio and Mississippi River Crossings, Cancellation Rule for Constructing Com- bination Rates	614
Lumber from Chicago and Ohio and Mississippi River Crossings to C. F. A. Territory, Combination Rule	279
McClain Coal Co. <i>v.</i> C., T. H. & S. E. Ry. Co.	183
McClintick, trading as McClintick & Co. <i>v.</i> P. M. Ry. Co.	69

	Page
Pressed Steel Car Co. v. Director General, as Agent (B. & O. R. R. Co.)	224
Privately Owned Cars and Cars for Railroad Fuel, Distribution among Coal Mines	701
Railroad Commission of Mississippi v. A. & V. Ry. Co.	435
Railway Equipment, Construction and Repair, Erie R. R. Co.	646
Rates, Regulations, and Practices of Peoria & Pekin Union Ry. Co., at Peoria, Ill., and Near-by Points	3
Regins, Cotton, from Ohio and Mississippi River Crossings to Eastern Cities	453
Released Rates on Stone in the Southeast	90
Restrictions in the Combination Rule on Livestock	458
Rodney Milling Co. v. M. P. R. R. Co.	200
Ross Bros. Horse & Mule Co. v. U. P. R. R. Co.	479
Routing via North Dakota Junctions	411
Royal Milling Co. v. Director General, as Agent	377
Rutenber Electric Co. v. C., C., C. & St. L. Ry. Co.	541
St. Louis, Brownsville & Mexico Ry. Co., Pearson & Co. v.	681
St. Louis-San Francisco Ry. Co.:	
Board of County Commissioners, Crawford County, Kans., v.	502
Leake & Goodlett v.	73
Pioneer Pearl Button Co. v.	599
Schloss & Kahn Grocery Co. v.	67
Salt at South Atlantic and Gulf Ports, Handling Charges	640
San Antonio & Aransas Pass Ry. Co., San Antonio Paper Co. v.	352
San Antonio Paper Co. v. S. A. & A. P. Ry. Co.	352
Schloss & Kahn Grocery Co. v. St. L.-S. F. Ry. Co.	67
Seaman Paper Co. v. Director General, as Agent	139
Seneca Iron & Steel Co. v. S. B. Ry. Co.	637
Sexauer & Son v. Director General, as Agent, (C. & N. W. Ry. Co.)	687
Shanard Elevator Co. v. M. E. Ry. Co.	151
Shearman Concrete Pipe Co. v. S. Ry. Co.	179
Shingles and Lumber from North Pacific Coast to Southern Points	501
Shotwell Mfg. Co. v. C. & N. W. Ry. Co.	587
Sisal Sales Corp. v. B. & O. R. R. Co.	297
Somerville Iron Works v. C. R. R. Co. of N. J.	39
South Buffalo Ry. Co., Seneca Iron & Steel Co. (et al.) v.	637
Southern Pacific Co.:	
Fuller & Co. v.	154
Musto Sons-Keenan Co. v.	447
United Commercial Co. v.	417

Southern Ry. Co.:	Page
Armour Fertilizer Works <i>v.</i>	186
Chattanooga Bottle & Glass Mfg. Co. <i>v.</i>	71
Shearman Concrete Pipe Co <i>v.</i>	179
Sutphin Co. <i>v.</i>	147
Southland Cotton Oil Co. <i>v.</i> M., K. & T. Ry. Co.	213
Southwestern Milling Co. (Inc.) <i>v.</i> M. P. R. R. Co.	200
Southwestern Shipbuilding Co. <i>v.</i> Director General, as Agent (L. A. & S. L. R. R. Co.)	337
Spokane & Eastern Ry. & Power Co., Hawkeye Fuel Co. <i>v.</i> ..	157
Stahlberg, Doing Business as Winters Metallic Paint Co. <i>v.</i> C., M. & St. P. Ry. Co.	427
Standard Boiler & Plate Iron Co. <i>v.</i> P. R. R. Co.	285
Standard Lumber Co. <i>v.</i> Director General, as Agent (S. Ry. Co.)	58
Standard Oil Co. (California) <i>v.</i> Director General, as Agent (O. S. L. R. R. Co.)	278
State Corporation of New Mexico <i>v.</i> A., T. & S. F. Ry. Co. ..	43
Steel and Iron Articles in Mixed Carloads to Points in South- west	31
Steel and Iron between New Jersey and New England Points.	499
Stone in the Southeast, Released Rates	90
Storage, Wharfage, Handling, and Other Accessorial Ser- vices at South Atlantic and Gulf Ports, Charges for.	609
Stuttgart Rice Mill Co. <i>v.</i> A. & V. Ry. Co.	517
Sutphin Co. <i>v.</i> S. Ry. Co.	147
Switching at—	
Pekin, Ill.	3
Peoria, Ill.	3
Texas Co. <i>v.</i> A., T. & S. F. Ry. Co.	691
Texas Livestock Shippers Protective League <i>v.</i> Director General, as Agent (A. & S. Ry. Co)	479
Toledo Cooker Co. <i>v.</i> N. & A. Ry. Co.	271
Traffic Bureau of—	
Helena <i>v.</i> M. P. R. R. Co.	456
Jackson <i>v.</i> :	
A., C. & Y. Ry. Co.	339
A. & V. Ry. Co.	55
Jackson, for—	
Cabbell-Irby Co. <i>v.</i> B. & O. R. R. Co.	342
Case-Teel Co. <i>v.</i> A. & V. Ry. Co.	322
La Crosse Chamber of Commerce <i>v.</i> Director General, as Agent (B. & O. R. R. Co.)	602
Omaha Chamber of Commerce for Trimble Bros. (Inc.) <i>v.</i> A., B. & A. Ry. Co.	583

	Page
Trimble Bros. (Inc.), Omaha Chamber of Commerce, Traffic Bureau for, <i>v. A., B. & A. Ry. Co</i>	583
Union Pacific R. R. Co., Ross Bros. Horse & Mule Co. <i>v.</i>	479
Union R. R. Co., American Bridge Co. <i>v.</i>	637
United Commercial Co. <i>v. S. P. Co.</i>	417
United Cycle & Supply Co. <i>v. B. & O. R. R. Co.</i>	689
Universal Oil Co. <i>v. Director General, as Agent (S. P. Co.)</i> ..	237
Vye Grain Co. <i>v. C., M. & St. P. Ry Co.</i>	411
Wagner Motor Co. <i>v. M. C. R. R. Co.</i>	195
Walsh & Weidner Bolier Co. <i>v. Director General, as Agent</i>	1
Western Stoneware Co. <i>v. C., B. & Q. R. R. Co.</i>	143
West Virginia Rail Co., <i>v. P. R. R. Co.</i>	216
Wharfage, Handling, Storage, and Other Accessorial Services at South Atlantic and Gulf Ports, Charges for	609
Wheeling & Lake Erie Ry. Co., Cleveland Akron Bag Co. <i>v.</i> ..	694
Wichita Board of Commerce <i>v. Director General, as Agent (A. & W. Ry. Co.)</i>	479
Wichita Motors Co. <i>v. A. & V. Ry. Co.</i>	635
Winters Metallic Paint Co. <i>v. C., M. & St. P. Ry. Co.</i>	427
Wolf & Sons <i>v. C., T. H. & S. E. Ry. Co.</i>	183
Wool, Imported, from Boston and New York to La Porte and Wishawaka, Ind	26
Worth Steel Co. <i>v. Director General, as Agent</i>	37
Wright & Wimmer <i>v. C., T. H. & S. E. Ry. Co.</i>	183

TABLE OF CASES CITED

	Page
Adleta Paper Co. <i>v.</i> C. & N. W. Ry. Co. (31 I. C. C. 347) ..	162
Albers Bros. Milling Co. <i>v.</i> Director General (85 I. C. C. 747)	239
American Lumber & Export Co. <i>v.</i> Director General (78 I. C. C. 48)	60
Anaconda Copper Mining Co. <i>v.</i> Director General:	
(57 I. C. C. 723)	351
(80 I. C. C. 481)	351, 549, 553
Anderson & Co. <i>v.</i> Director General (61 I. C. C. 64)	63
Arkansas Jobbers & Mfrs. Asso. <i>v.</i> C., R. I. & P. Ry. Co. (80 I. C. C. 620)	457
Arkansas Rice Shippers Traffic Bureau <i>v.</i> A. A. R. R. Co. (47 I. C. C. 566)	519
Arlington Heights Fruit Exchange <i>v.</i> S. P. Co. (22 I. C. C. 149)	598
Armocost & Co., <i>v.</i> M. & M. T. Co. (88 I. C. C. 187)	72
Armour & Co. <i>v.</i> P. R. R. Co. (83 I. C. C. 289)	244
Assigned Cars for Bituminous Coal Mines (80 I. C. C. 520) ..	701
Associated Jobbers of Los Angeles <i>v.</i> A., T. & S. F. Ry. Co. (18 I. C. C. 310)	230
Baker-Reid Lumber Co. <i>v.</i> B. & O. R. R. Co. (74 I. C. C. 489) ..	414
Ballou Brick Co. <i>v.</i> A., T. & S. F. Ry. Co. (77 I. C. C. 4)	82
Baltimore & Ohio R. R. Co. <i>v.</i> Pitcairn Coal Co. (215 U. S. 481)	728, 747
Baltimore & Ohio Southwestern R. R. Co. <i>v.</i> Settle (260 U. S. 166)	100
Barnett Oil & Gas Co. <i>v.</i> Director General (59 I. C. C. 689) ..	85
Beatrice Creamery Co. <i>v.</i> I. C. R. R. Co. (15 I. C. C. 109)	685
Bekkedal <i>v.</i> C., St. P., M. & O. Ry. Co. (37 I. C. C. 611)	267
Bernard Co. <i>v.</i> Director General (74 I. C. C. 557)	511
Berthold & Jennings Lumber Co., <i>v.</i> S. Ry. Co. (49 I. C. C. 113)	74
Birmingham Commission Co. <i>v.</i> Director General (74 I. C. C. 693)	664
Bituminous Coal to C. F. A. Territory (46 I. C. C. 66)	425
Bloom & Co. <i>v.</i> Director General (80 I. C. C. 283)	310
Boldt Co. <i>v.</i> P., C., C. & St. L. Ry. Co. (42 I. C. C. 308)	690
93 I. C. C.	

Boston Wool Trade Asso. v.:	Page
A. & S. Ry. Co. (64 I. C. C. 365)	28, 511
B. & A. R. R. Co. (77 I. C. C. 431)	28
Director General (69 I. C. C. 282)	14
Bretney Co. v. Director General (58 I. C. C. 217)	267
Cancellation of Combination Rule to the South-West (74 I. C. C. 505)	280
Cancellation of Rule for Combination Rates (85 I. C. C. 101) ..	280
Cancellation Rule for Combination Rates (81 I. C. C. 745) ...	614
Carnegie Steel Co. v. Director General (80 I. C. C. 269)	225
Carnie-Goudie Mfg. Co. v. A., T. & S. F. Ry. Co. (68 I. C. C. 40)	244
Car Spotting Charges (34 I. C. C. 609)	229
Carstens Packing Co. v. Director General (68 I. C. C. 125) ...	307
Central Foundry Co. v. S. Ry. Co. (42 I. C. C. 333)	335
C. F. A. Class Scale Case (45 I. C. C. 254)	367, 604
Central R. R. Co. of New Jersey v. United States (257 U. S. 247)	208
Chicago & A. R. Co. v.:	
Interstate Commerce Commission (173 Fed. 930)	715, 729
Peoria & P. U. Ry. Co.—	
(250 Ill. 320)	14
(95 N. E. 137)	14
Chicago, M. & St. P. Ry. v. Minn. Civic Assn. (247 U. S. 490)	13, 152
Chicago, West Pullman & Southern R. R. Co. Case (37 I. C. C. 408)	115
Cincinnati Asso. of Purchasing Agents v. L. & N. R. R. Co (89 I. C. C. 285)	575
Cincinnati, H. & D. Ry. Co. v. Inter. Com. Com. (206 U. S. 142)	632
City of Memphis v. C., R. I. & P. Ry. Co. (39 I. C. C. 256) ..	522
Classification of Automobile Fenders (92 I. C. C. 223)	511
Class Rates between Stations in Louisiana (33 I. C. C. 302) ..	463
Clay Grain Co. v. A., T. & S. F. Ry. Co. (78 I. C. C. 539) ..	124
Coal & Coke from C. & O. Points (89 I. C. C. 638)	424
Coal from Kentucky, Tennessee, and Virginia (60 I. C. C. 166) ..	576
Coffee from Galveston and Other Gulf Ports (58 I. C. C. 716) ..	555
Coke Producers Asso. of Connellsville v. B. & O. R. R. Co. (27 I. C. C. 125)	574
Combination Rates on Agricultural Limestone (78 I. C. C. 579)	188, 280
	93 I. C. C.

Combination Rule on—	Page
Cotton and Cotton Linters (92 I. C. C. 165)	281
Livestock (92 I. C. C. 205)	281
Lumber (93 I. C. C. 279)	460
Conference Ruling:	
No. 32	664
No. 341	22
Construction and Repair of Ry. Equipment:	
A. C. L. R. R. Co. (66 I. C. C. 727)	660, 743
C. R. R. of N. J. (89 I. C. C. 751)	743
C. & N. W. Ry. Co. (69 I. C. C. 143)	743
Erie R. R. Co. (93 I. C. C. 646)	743
N. Y. C. R. R. Co. (66 I. C. C. 732)	743
Penn. R. R. (66 I. C. C. 694)	647, 743
S. A. L. Ry. Co. (69 I. C. C. 151)	743
Various Railway Companies (91 I. C. C. 399)	743
Corporation Commission of Virginia v. C. & O. Ry. Co. (40 I. C. C. 24)	549
Crane Iron Works v. C. R. R. Co. of N. J. (17 I. C. C. 514) ...	229
Crown Willamette Paper Co. v. Director General:	
(78 I. C. C. 273)	108
(85 I. C. C. 657)	109
Davis v. Portland Seed Co. (264 U. S. 403)	51
Dean Mill Co. v. M. P. R. R. Co. (80 I. C. C. 174)	134, 207
Democrat Printing Co. v. Director General (74 I. C. C. 595) ..	353
Dewey Portland Cement Co. v. Director General (60 I. C. C. 609)	312
Dill & Collins Co. v. P. & R. R. Co. (U. R. A.—806)	109
Divisions of Joint Rates on Railway Fuel Coal (37 I. C. C. 265)	716
Douglas & Co. v. C., R. I. & P. Ry. Co. (21 I. C. C. 97)	737
Earthenware or Stoneware from Red Wing (81 I. C. C. 64) ..	144
Electric Coal Co. v. Director General (60 I. C. C. 683)	225
Export Freight Free Time (47 I. C. C. 162)	290
Express Classification, 1920 (59 I. C. C. 265)	167
Express Rates, 1920 (58 I. C. C. 707)	78
Express Rates, 1922:	
(83 I. C. C. 606)	390
(89 I. C. C. 297)	78, 509
Express Rates on Milk and Cream via C. & N. W. (88 I. C. C. 696)	685
Express Rates, Practices, Accounts, and Revenues:	
(24 I. C. C. 380)	166, 390
(28 I. C. C. 131)	166, 390
(35 I. C. C. 3)	390
93 I. C. C.	

	Page
Fairfield Lumber & Coal Co. <i>v.</i> Director General (69 I. C. C. 87)	225
Federal Valley R. R. Co. <i>v.</i> T. & O. C. Ry. Co. (68 I. C. C. 499)	114
Fertilizer and Fertilizer Material (80 I. C. C. 604)	398
Fifteen Per Cent Case (45 I. C. C. 303)	106, 193, 603
Florida Fruit & Vegetable Asso. <i>v.</i> A. C. L. R. R. Co. (17 I. C. C. 552)	584
Florida Fruit & Vegetable Shippers <i>v.</i> A. C. L. R. R. Co. (22 I. C. C. 11)	584
Flushing Farmers Elevator Co. <i>v.</i> Director General (87 I. C. C. 9)	152
Fourth Section Violations in the Southeast:	
(30 I. C. C. 153)	562
(32 I. C. C. 61)	318
Fox Paper Co. <i>v.</i> Director General (68 I. C. C. 479)	581
Fox's Sons <i>v.</i> B. & A. R. R. Co. (49 I. C. C. 656)	26
Friedlander <i>v.</i> Director General (85 I. C. C. 465)	272
Galion Iron Works & Mfg. Co. <i>v.</i> B. & O. R. R. Co. (47 I. C. C. 136)	574
Galveston Commercial Asso. <i>v.</i> Director General (57 I. C. C. 390)	670
General Chemical Co. <i>v.</i> B. & O. R. R. Co. (83 I. C. C. 582)	219, 274
General Electric Co. <i>v.</i> N. Y. C. & H. R. R. R. Co. (14 I. C. C. 237)	229
General Gas Light Co. <i>v.</i> A. G. S. R. R. Co. (83 I. C. C. 361)	542
Georgia Fruit Exchange <i>v.</i> S. Ry. Co. (20 I. C. C. 623)	329
Georgia Peach Growers' Asso. <i>v.</i> A. C. L. R. R. Co. (10 I. C. C. 255)	329
Grain and Flaxseed from Twin Cities (78 I. C. C. 575)	300
Grain, Grain Products, and Feeds (78 I. C. C. 209)	440
Greene Cananea Copper Co. <i>v.</i> Director General (80 I. C. C. 121)	549, 553
Haarman Vinegar & Pickle Co. <i>v.</i> Director General (57 I. C. C. 294)	252
Hale-Halsell Co. <i>v.</i> C., R. I. & P. Ry. Co. (83 I. C. C. 313)	206, 353
Handling Charges at Louisiana Ports (61 I. C. C. 379)	613, 642
Handling Charges on Shingles (89 I. C. C. 641)	644
Handling of Heavy Articles (47 I. C. C. 323)	290
Hanford Produce Co. <i>v.</i> Director General (80 I. C. C. 29)	685
Hay Minimum Weights (39 I. C. C. 167)	47
Hayward Bros. Shoe Co. <i>v.</i> C., M. & St. P. Ry. Co. (83 I. C. C. 525)	243
Helena Traffic Bureau <i>v.</i> M. P. R. R. Co. (89 I. C. C. 405)	438, 456
Hocking Valley case. <i>See</i> Interstate Commerce Commission <i>v.</i> I. C. R. R. Co.	

Holmes & Hallowell Co. v. G. N. Ry. Co.:	Page
(69 I. C. C. 11)	97
(77 I. C. C. 683)	160
Horses and Mules from Kansas City, Mo. (69 I. C. C. 97) ..	479, 491
Houston Cotton Exchange v. A. & A. R. R. Corp. (87 I. C. C. 392)	268
Hudson Mule Co. v. L. & N. R. R. Co. (63 I. C. C. 6)	325, 487
Ideal Fuel Col. v. Director General (64 I. C. C. 555)	582
Illinois Central case. <i>See</i> Interstate Commerce Commission v. I. C. R. R. Co.	
Illinois Coal Cases, 1920 (62 I. C. C. 741)	54
Imported Wool from New York and Boston (80 I. C. C. 309) ..	29
Increased Rates, 1920 (58 I. C. C. 220) ... 184, 194, 222, 350, 584, 589	
Indiahoma Refining Co. v. Director General (74 I. C. C. 392) ..	215
Indiana Rates, Fares and Charges (60 I. C. C. 337)	184
Indian Packing Corp. v. Director General (64 I. C. C. 205)	400
Industrial Railways Case:	
(29 I. C. C. 212)	228
(32 I. C. C. 129)	229
Industrial Traffic Asso. v. N. Y. C. & H. R. R. Co. (37 I. C. C. 607)	103
Inland Crystal Salt Co. v. B., A. & P. Ry. Co. (78 I. C. C. 659) ..	549, 553
Inland Seed Co. v. O.-W. R. R. & N. Co. (40 I. C. C. 517)	160
Interior Iowa cases (46 I. C. C. 39)	196
Intermediate Routing (81 I. C. C. 272)	411
International Coal Products Corp. v. Director General (81 I. C. C. 435)	505
International Harvester Co. v. N. Y. C. R. R. Co. (88 I. C. C. 368)	231
International Paper Co. v. Director General (87 I. C. C. 142) ..	109
Interstate Commerce Commission v.:	
B. & O. R. R. Co. (225 U. S. 326)	715
I. C. R. R. Co. (215 U. S. 452)	715, 725, 737
Investigation of Alleged Unreasonable Rates on Meats (22 I. C. C. 160)	488
Iola Cement Mills Traffic Asso. v. A. W. Ry. Co. (87 I. C. C. 451)	211
Iowa Railroad Commissioners v. Director General (63 I. C. C. 405)	444
Iron and Steel Articles from Philadelphia (92 I. C. C. 123) ..	426
Iron Ore Rate Cases (41 I. C. C. 181)	228
Iroquois Pulp & Paper Co. v. G. & J. Ry. Co. (88 I. C. C. 255)	109
Jackson Paper Co. v. A. & V. Ry. Co. (87 I. C. C. 529)	319, 556
93 I. C. C.	

	Page
Jobbers' & Mfrs.' Bureau of Huntington v. A. C. R. R. Co. (57 I. C. C. 64)	217
Johnson & Son v. C. & O. Ry. (24 I. C. C. 698)	365
Jones & Laughlin Steel Co. v.:	
Director General (60 I. C. C. 325)	225
P. & L. E. R. R. Co. (91 I. C. C. 300)	231, 637
Kansas City Chamber of Commerce v. A. & W. Ry. Co. (89 I. C. C. 22)	479, 492
Kansas City Live Stock Exchange v. A. & S. Ry. Co. (81 I. C. C. 482)	493
Kansas City Millers' Club v. A., T. & S. F. Ry. Co. (50 I. C. C. 170)	47
Kaw River Sand & Material Co. v. A., T. & S. F. Ry. Co. (51 I. C. C. 350)	347
Kirschbraun & Sons v. American Ry. Exp. Co. (88 I. C. C. 670)	686
Knoxville Traffic Bureau v. S. Ry. Co. (89 I. C. C. 708)	319
La Crosse Chamber of Commerce v. A. A. R. R. Co. (61 I. C. C. 289)	603
Lake Charles Rice Milling Co. v. A. & N. Ry. Co. (63 I. C. C. 18)	519, 529
Lake Dock Coal Cases (89 I. C. C. 170)	97
Lake Superior Paper Co. v.:	
Director General—	
(61 I. C. C. 709)	382
(64 I. C. C. 33)	382
M., St. P. & S. Ste. M. Ry. Co. (42 I. C. C. 109)	382
Lamb-Fish Lumber Co. v. Y. & M. V. R. R. Co. (42 I. C. C. 470)	80
Lancaster Steel Products Corp. v. Director General (73 I. C. C. 567)	171
Lehigh Lime Co. v. A., C. & Y. Ry. Co. (85 I. C. C. 341)	617, 629
Lehigh Portland Cement Co. v. Director General (62 I. C. C. 231)	230
Leigh Banana Case Co. v. Director General (59 I. C. C. 113) ..	510
Lighterage and Storage Regulations at New York (35 I. C. C. 47)	290
Lindsay & Co. v.:	
G. N. Ry. Co. (25 I. C. C. 424)	175
N. P. Ry. Co. (33 I. C. C. 150)	175
Live Stock to, from and between Points in Southeast (74 I. C. C. 419)	325, 487
Lockport Paper Co. v. W. M. Ry. Co. (87 I. C. C. 347)	448

	Page
Loewenthal Co. v. C. & N. W. Ry. Co. (68 I. C. C. 115)	264
Los Angeles case. <i>See</i> Associated Jobbers of Los Angeles v. A., T. & S. F. Ry. Co.	
Los Angeles Switching Case (234 U. S. 294)	230
Louisville & N. R. R. Co. v. Mottley (219 U. S. 467)	718, 737
Lubrite Refining Co. v. D.-G. C. Ry. Co. (80 I. C. C. 515)	89
Lumber between Points in Western Trunk Line Territory (38 I. C. C. 370)	276
MacGowan Coffee Co. v. I. C. R. R. Co. (66 I. C. C. 389)	555
Mangelsdorf Seed Co. v. A., T. & S. F. Ry. Co. (88 I. C. C. 120)	68
Marting Iron & Steel Co. Case (48 I. C. C. 620)	230
Mason City Brick & Tile Co. v. Director General (77 I. C. C. 22)	82
Massachusetts Oil Refining Co. v. B. & A. R. R. Co. (66 I. C. C. 535)	110
Meigs Pulpwood Co. v. Director General (78 I. C. C. 473)	72
Memphis Freight Bureau v.:	
C. G. W. R. R. Co. (81 I. C. C. 626)	242
I. C. R. R. Co. (30 I. C. C. 471)	519
Memphis-Southwestern Investigation:	
(55 I. C. C. 515) 254, 286, 438, 464, 476, 488	
(77 I. C. C. 473) 33, 149, 210, 244, 254, 286, 319, 371, 393, 395, 438, 493, 504, 669	
Meyer-Vasquez Produce Co. v. Director General (89 I. C. C. 437)	242
Michigan Percentage Cases (47 I. C. C. 409)	217
Michigan Seating Co. v. G. T.-W. Ry. Co. (40 I. C. C. 503)	509
Michigan Tanning & Extract Co. v. C., M. & St. P. Ry. Co. (87 I. C. C. 322)	268
Midcontinent Oil Rates (36 I. C. C. 109)	86
Minneapolis & St. Louis R. R. Co. v. P. & P. U. Ry. Co. (68 I. C. C. 412)	3, 13
Minneapolis Traffic Asso. v. C. & N. W. Ry. Co. (23 I. C. C. 432)	376
Minnesota & Ontario Paper Co. v. N. P. Ry. Co. (66 I. C. C. 571)	140, 161, 205, 352, 382
Mississippi River case:	
(28 I. C. C. 47)	196
(29 I. C. C. 530)	196
Missouri Portland Cement Co. v. Director General (88 I. C. C. 492)	262
Mitchell case. <i>See</i> Lehigh Lime Co. v. A., C. & Y. Ry. Co. 93 I. C. C.	

	Page
Mitsui & Co. <i>v.</i> Director General (58 I. C. C. 322)	239
Monadnock Paper Mills <i>v.</i> B. & M. R. R. (87 I. C. C. 137) ..	109
Montgomery Chamber of Commerce <i>v.</i> Director General (57 I. C. C. 610)	558
Moshassuck Valley R. R. Co. <i>v.</i> N. Y., N. H. & H. R. R. Co. (69 I. C. C. 368)	117
Mosson Co. <i>v.</i> P. R. R. (19 I. C. C. 30)	296
Muskogee Wholesale Grocery Co. <i>v.</i> M., K. & T. Ry. Co. (57 I. C. C. 125)	162
Mutual Rice Trade & Devel. Asso. Houston <i>v.</i> I. & G. N. R. R. (23 I. C. C. 219)	519
Natchez Chamber of Commerce <i>v.</i> :	
A. H. T. Ry. Co. (52 I. C. C. 558)	482
L. & A. Ry. Co.:	
(52 I. C. C. 105)	33, 463, 668
(58 I. C. C. 610)	668
(59 I. C. C. 678)	468
National Coffee Co. <i>v.</i> G., C. & S. F. Ry. Co. (92 I. C. C. 14) ..	557
National Live Stock Exchange <i>v.</i> :	
A. A. R. R. Co. (69 I. C. C. 125)	306
A., T. & S. F. Ry. Co. (81 I. C. C. 305)	308
National Live Stock Shippers' League <i>v.</i> A., T. & S. F. Ry. Co. (63 I. C. C. 107)	486
National Paving Brick Mfrs. Asso. <i>v.</i> A. & V. Ry. Co. (68 I. C. C. 213)	72, 83, 624
Nebraska Live Stock Case (89 I. C. C. 444)	487
New Haven R. R. <i>v.</i> Interstate Com. Com. (200 U. S. 361) ..	718
New York Harbor Storage (47 I. C. C. 141)	290
Nonsurrender of Inbound Billing (73 I. C. C. 455)	300
North Iowa Traffic Asso. <i>v.</i> Director General (58 I. C. C. 491) ..	196
Northwestern Traffic & Service Bureau <i>v.</i> C. W. Ry. Co. (80 I. C. C. 659)	97
Official Classification Rates on Paper (38 I. C. C. 120)	141
Official Classification Ratings:	
(37 I. C. C. 166)	514
(46 I. C. C. 383)	514
Omaha Grain Exchange <i>v.</i> C., B. & Q. R. R. Co. (26 I. C. C. 553)	378
Omaha Live Stock Exchange <i>v.</i> C., M. & St. P. Ry. Co. (69 I. C. C. 688)	11
Pacific Creamery Co. <i>v.</i> S. P. Co.:	
(34 I. C. C. 586)	223
(42 I. C. C. 93)	222, 358

	Page
Pardee Works <i>v.</i> C. R. R. of N. J. (39 I. C. C. 162)	500
Pennsylvania Co. <i>v.</i> United States (236 U. S. 351)	19
Pennsylvania Railroad Company case. <i>See</i> Construction and Repair of Ry. Equipment, Penn. R. R.	
Penn. Tobacco Co. <i>v.</i> Old Dominion S. S. Co. (18 I. C. C. 197) ..	717
Petroleum Oil and Petroleum Oil Products (59 I. C. C. 499) ..	86
Phoenix Printing Co. <i>v.</i> M., K. & T. Ry. Co. (31 I. C. C. 289) ..	162
Pipe Line Cases (234 U. S. 548)	715
Pittsburgh, A. & McK. R. R. Co. <i>v.</i> Director General: (57 I. C. C. 1)	225
(69 I. C. C. 223)	225
Pittsburgh Crucible Steel Co. <i>v.</i> Director General (81 I. C. C. 659)	38
Plymouth Coal Co. <i>v.</i> P. R. R. Co. (56 I. C. C. 699)	549, 553
Portland Traffic & Transportation Asso. <i>v.</i> O.-W. R. R. & N. Co. (56 I. C. C. 410)	244
Prairie Pipe Line Co. <i>v.</i> Director General (88 I. C. C. 167) ..	504, 670
Private Cars (50 I. C. C. 652)	190
Pure Oil Co. <i>v.</i> Director General (64 I. C. C. 444)	214
Radinsky <i>v.</i> C. & N. W. Ry. Co. (55 I. C. C. 203)	264
Rail & River Coal Co. <i>v.</i> B. & O. R. R. Co. (14 I. C. C. 86)	718, 730, 747
Railroad Commission of Louisiana <i>v.</i> A. H. T. Ry. Co. (48 I. C. C. 312)	33, 482, 670
Railway Mail Pay (85 I. C. C. 157)	229
Rates and Charges on Grain and Grain Products (91 I. C. C. 105)	735
Rates on Clam, Mussel, and Oyster Shells (74 I. C. C. 245) ..	398
Rates on Grain, Grain Products, and Hay: (64 I. C. C. 85)	128
(69 I. C. C. 562)	128
(80 I. C. C. 362)	128
Rates on Lumber and Lumber Products (52 I. C. C. 598) ..	208, 387
Rates on News Print Paper from Sault Ste. Marie (26 I. C. C. 13)	382
Rates on Railroad Fuel and Other Coal (36 I. C. C. 1)	716
Rates to and from Nashville (61 I. C. C. 308)	362, 513
Rates to, from, and between Points South of Ohio River: (64 I. C. C. 107)	318
(64 I. C. C. 306)	439, 520, 556, 563
Reciprocal Switching at Kansas City (68 I. C. C. 591)	19
Reconsignment Case (47 I. C. C. 590)	335
Reduced Rates, 1922 (68 I. C. C. 676)	213, 226
93 I. C. C.	

	Page
Reduced Rates on Returned Shipments (19 I. C. C. 409)	515
Republic of France <i>v.</i> Director General (68 I. C. C. 424)	244
Rice from Texas and Louisiana:	
(40 I. C. C. 285)	519
(43 I. C. C. 29)	521
(49 I. C. C. 172)	521
Rock Island Railway <i>v.</i> Rio Grande Railroad (143 U. S. 596) ..	12
Rosenberg Bros. & Co. <i>v.</i> Director General (83 I. C. C. 557) ..	550, 554
Rosin & Turpentine Co. <i>v.</i> A. C. L. R. R. Co. (73 I. C. C. 141) ..	245
Routing on Grain and Grain Products (81 I. C. C. 725)	414
Routing via Midland Continental R. R. (78 I. C. C. 328)	412
Russi & Co. <i>v.</i> O. S. R. R. Co. (45 I. C. C. 77)	80
Ruttle <i>v.</i> P. M. R. R. Co. (13 I. C. C. 179)	748
St. Louis Merchants Exchange <i>v.</i> A. & R. R. R. Co. (87 I. C. C. 547)	557
St. Louis, Springfield & Peoria R. R. <i>v.</i> P. & P. U. Ry. Co. (26 I. C. C. 226)	6, 17
Salt Lake Potash Co. <i>v.</i> A. C. L. R. R. Co. (87 I. C. C. 695) ..	546
Santa Fe Railway <i>v.</i> Grant Bros. (228 U. S. 177)	715
Scheidenhelm Co. <i>v.</i> C., B. & Q. R. R. Co. (88 I. C. C. 319) ..	102
Schwartz <i>v.</i> St. L.-S. F. Ry. Co. (51 I. C. C. 145)	375
Seaboard By-Product Coke Co. <i>v.</i> Director General (62 I. C. C. 317)	80, 575
Shearman Concrete Pipe Co. <i>v.</i> S. Ry. Co. (87 I. C. C. 344) ..	181
Shreveport-Texas Cattle, Lignite, Wood, and Tanbark (48 I. C. C. 283)	488
Sioux City Terminal Elevator Co. <i>v.</i> C., M. & St. P. Ry. Co.:	
(23 I. C. C. 98)	444
(27 I. C. C. 457)	444
Sligo Iron Store Co. <i>v.</i> W. M. Ry. Co.:	
(62 I. C. C. 643)	261, 280, 338, 459, 548
(73 I. C. C. 551)	280, 338, 459, 548
Sloss-Sheffield Steel & Iron Co. <i>v.</i> L. & N. R. R. Co. (40 I. C. C. 738)	505
Solvay Process Co. <i>v.</i> D., L. & W. R. R. Co. (14 I. C. C. 246) ..	229
South Dakota R. R. Commissioners <i>v.</i> C. & N. W. Ry. Co. (77 I. C. C. 451)	487
Southern Appalachian Coal Operators <i>v.</i> L. & N. R. R. Co. (83 I. C. C. 136)	576
Southern Pacific Co. <i>v.</i> :	
Darnell-Taenzer Co. (245 U. S. 531)	38, 262
Interstate Com. Comm. (219 U. S. 433)	737
Southern Pacific Terminal Co. <i>v.</i> Int. Comm. Comm. (219 U. S. 498)	13

	Page
Southern Veneer Asso. <i>v.</i> A. C. L. R. R. Co. (62 I. C. C. 669) ..	690
Southwestern Class Case (48 I. C. C. 379)	484
Sprague Tire & Rubber Co. <i>v.</i> Director General (80 I. C. C. 285)	351
Standard Asphalt & Refining Co. <i>v.</i> Director General (66 I. C. C. 611)	345
Standard Oil Co. <i>v.</i> :	
Director General (60 I. C. C. 105)	89
M. V. R. R. Co. (81 I. C. C. 193)	187
Standard Sanitary Mfg. Co. <i>v.</i> S. Ry. Co. (80 I. C. C. 7)	319
Suffern Grain Co. <i>v.</i> I. C. R. R. Co. (27 I. C. C. 192)	444
Swift & Co. <i>v.</i> Director General (66 I. C. C. 409)	29
Switching Charges at Peoria (77 I. C. C. 43)	3, 17
Tap Line Case (23 I. C. C. 277)	676
Terminal Allowance to St. Louis Coke & Iron Co. (85 I. C. C. 591)	231
Terre Haute, Indianapolis & E. T. Co. <i>v.</i> Director General (77 I. C. C. 658)	256
Texas Grain Dealers Asso. <i>v.</i> A. & S. Ry. Co. (81 I. C. C. 96) ..	443
Tidewater Demurrage (46 I. C. C. 677)	290
Toledo Produce Exchange <i>v.</i> N. Y. C. R. R. Co. (50 I. C. C. 515)	444
Traer <i>v.</i> C. & A. R. R. Co. (13 I. C. C. 451)	715, 729, 740
Transcontinental Rates (46 I. C. C. 236)	546
Transportation of Wool, Hides, and Pelts (23 I. C. C. 151) ..	28
United Paperboard Co. <i>v.</i> N. Y. C. R. R. Co. (62 I. C. C. 59) ..	109
United States <i>v.</i> :	
Baltimore & O. R. Co.—	
(154 Fed. 108)	745
(165 Fed. 113)	728, 747
Brooklyn Terminal (249 U. S. 296)	15
Illinois Cent. R. R. (263 U. S. 515)	721
Louis. & Nash. R. R. (235 U. S. 314)	52
New River Co. (265 U. S. 533)	714, 730
Pennsylvania R. R. Co. (266 U. S. 191)	730
Union Stock Yard (226 U. S. 286)	718
United States Cast Iron P. & F. Co. <i>v.</i> Director General (57 I. C. C. 677)	230
U. S. Industrial Alcohol Co. <i>v.</i> Director General (68 I. C. C. 389)	310
U. S. Steel Products Co. <i>v.</i> Director General (88 I. C. C. 57) ..	236
U. S. War Department <i>v.</i> A. & S. Ry. (77 I. C. C. 317)	21
United Verde Mining Co. <i>v.</i> A., T. & S. F. Ry. Co. (88 I. C. C. 5)	199
93 I. C. C.	

	Page
Virginia-Carolina Chemical Co. <i>v.</i> A. C. L. R. R. Co. (78 I. C. C. 107)	586
Virginia Chamber of Commerce <i>v.</i> A., T. & S. F. Ry. Co. (92 I. C. C. 722)	598
Virginia Portland Ry. Co. (49 I. C. C. 332)	230
Waco Chamber of Commerce <i>v.</i> Director General (73 I. C. C. 708)	353
Wadhams Oil Co. <i>v.</i> C. & N. W. Ry. Co. (85 I. C. C. 705)	86
Wagner & Steiner <i>v.</i> Director General (68 I. C. C. 138) ...	550, 554
Wasteful Service by Tap Lines (53 I. C. C. 656)	677
Waxelbaum & Co. <i>v.</i> A. C. L. R. R. Co. (12 I. C. C. 178)	329
Webster Grocer Co. <i>v.</i> C. & N. W. Ry. Co. (21 I. C. C. 20) ..	54
Weighing of Freight by Carrier (28 I. C. C. 7)	369
Weissbaum & Co. <i>v.</i> Director General (53 I. C. C. 681)	375
Western Petroleum Refiners Asso. <i>v.</i> Director General (66 I. C. C. 426)	86
Western Stoneware Co. <i>v.</i> C., B. & Q. R. R. Co. (63 I. C. C. 215)	582
Wharfage Charges at—	
Galveston (26 I. C. C. 695)	126
South Atlantic and Gulf Ports (93 I. C. C. 609)	642
Wharfage Charges of the Galveston Wharf Co. (23 I. C. C. 535)	126
Wheeler & Timlin <i>v.</i> Director General (60 I. C. C. 265)	267
Whitaker-Glessner Co. <i>v.</i> B. & O. R. R. Co. (63 I. C. C. 47) ..	230
Wholesale Coal Trade Asso. <i>v.</i> Director General (58 I. C. C. 15)	293
Wichita Board of Commerce <i>v.</i> Director General (60 I. C. C. 536)	479, 490
Wichita Board of Trade <i>v.</i> A. & S. Ry. Co. (29 I. C. C. 376) ..	444
Wichita Motors Co. <i>v.</i> A. & V. Ry. Co. (88 I. C. C. 152)	635
Wickwire Steel Co. <i>v.</i> N. Y. C. & H. R. R. R. Co.:	
(27 I. C. C. 168)	574
(30 I. C. C. 415)	574
Wilson & Co. <i>v.</i> Director General (81 I. C. C. 79)	493
Windsor Turned Goods Co. <i>v.</i> C. & O. Ry. Co. (18 I. C. C. 162)	586
Winters Metallic Paint Co. <i>v.</i> C., M. & St. P. Ry. Co.:	
(16 I. C. C. 587)	428
(18 I. C. C. 596)	430
Wisconsin Rate Cases (44 I. C. C. 602)	603
Wofford Oil Co. <i>v.</i> Director General (66 I. C. C. 509)	222
Wood Pulp from International Falls, Minn. (85 I. C. C. 95) ..	106

	Page
Wood Rates between North Pacific Coast Points (61 I. C. C. 159)	157
Wool between New England Points (92 I. C. C. 236)	27
Wool Investigation. <i>See</i> Transportation of Wool, Hides, and Pelts.	
Wool Rates Investigation, 1923 (91 I. C. C. 235)	29
Worth Steel Co. <i>v.</i> Director General, as Agent (87 I. C. C. 29) . 93 I. C. C.	37

INTERSTATE COMMERCE COMMISSION REPORTS

No. 14806

WALSH & WEIDNER BOILER COMPANY *v.* DIRECTOR
GENERAL, AS AGENT

Submitted September 11, 1924. Decided October 21, 1924

Reparation awarded because of an unreasonable rate charged December 15, 1919, for the transportation of one carload of boilers and fixtures from Chattanooga, Tenn., to Belhaven, N. C.

John S. Fletcher and E. DeL. Wood for complainant.

John F. Finerty and E. C. Blanchard for defendant.

REPORT OF THE COMMISSION

DIVISION 4, COMMISSIONERS MEYER, EASTMAN, AND POTTER

BY DIVISION 4:

This case was presented under the shortened procedure. No exceptions were filed to the report proposed by the examiner.

Complainant corporation manufactures boilers at Chattanooga, Tenn. By complaint filed March 31, 1923, it is alleged that the applicable sixth-class rate of 70 cents charged on one carload of boilers and fixtures, weighing 43,000 pounds, shipped December 15, 1919, from Chattanooga to Belhaven, N. C., was unjust, unreasonable, and in violation of the provisions of section 4 in that the aggregate of intermediate rates by way of Nashville, Tenn., was 50.5 cents. Reparation is asked. Informal complaint was filed February 14, 1921. Rates will be stated in cents per 100 pounds.

In southern territory, in the absence of commodity rates, boilers and fixtures of the kind here involved are rated sixth class. There was a commodity rate on boilers from Chattanooga to Nashville of 19 cents and a sixth-class rate from Nashville to Belhaven of 31.5 cents, making an aggregate of 50.5 cents. Because of these facts complainant tendered the shipment to defendant upon a pre-paid bill of lading specifying therein the rate as 50.5 cents and the route as "via Nashville, Tenn." Defendant refused to execute the

bill of lading until the routing "via Nashville, Tenn.," had been stricken out and while the bill of lading still bears the notation "Rate 50½ cents," the amount paid was \$301, plus the war tax, or at the 70-cent rate. Movement by way of Nashville was physically impossible because of the height and width of this shipment.

At that time the rate of 31.5 cents from Nashville to Belhaven was applicable through Chattanooga, but no such movement is shown, and from Chattanooga to Newbern, N. C., there was a rate of 52.5 cents. Newbern and Belhaven are approximately equal distances in the same direction from Chattanooga; are served by the same corporate carrier, then operated under Federal control; and are in the same general seaboard territory.

Defendant urges that the rate to Newbern was unduly depressed, representing the rate to Norfolk, Va., plus the local beyond. In view of the fact, however, that a rate of 31.5 cents applied from Nashville through Chattanooga, it can not be urged with much force that complainant is seeking an unreasonably low rate when it asks a rate of 50.5 cents, based upon the aggregate of rates to and from Nashville.

We find that the rate charged, 70 cents per 100 pounds, was unjust and unreasonable to the extent it exceeded a rate of 50.5 cents which we find would have been reasonable. We also find that complainant made the shipment as described, paid and bore the charges thereon, and was damaged thereby in the sum of \$83.85; for which amount, with interest from December 15, 1919, an order of reparation will be issued.

No. 14534¹

RATES, REGULATIONS, AND PRACTICES OF PEORIA & PEKIN UNION RAILWAY COMPANY AT PEORIA, ILL., AND NEAR-BY POINTS

Submitted June 23, 1923. Decided October 14, 1924

1. The Peoria & Pekin Union found to be an independent common carrier entitled to assess charges for transportation services performed.
2. Switching charges, rates, and practices of the Peoria & Pekin Union at and in the vicinity of Peoria, Ill., found unjustly discriminatory and unduly prejudicial to the extent indicated in the report. General principles indicated for removing the unjust discrimination and undue prejudice found to exist.
3. Conference Ruling No. 341 overruled.
4. Former reports in No. 13110 and the investigation and suspension cases, 68 I. C. C., 412, and 77 I. C. C., 43.

M. M. Joyce and *Donald Evans* for Minneapolis & St. Louis Railroad Company; *Kenneth F. Burgess* and *Walter McFarland* for Chicago, Burlington & Quincy Railroad Company; *A. B. Enoch* for Chicago, Rock Island & Pacific Railway Company; *Silas H. Strawn* and *Frank H. Towner* for Chicago & Alton Railroad Company, *W. W. Wheelock* and *W. G. Bierd*, receivers, and Peoria Railway Terminal Company, *W. G. Bierd* and *H. I. Battles*, receivers; *Robert H. Widdicombe* for Chicago & North Western Railway Company; *R. G. Nicholson* for Atchison, Topeka & Santa Fe Railway Company; *R. V. Fletcher* for Illinois Central Railroad Company; *R. V. Fletcher*, *J. M. Elliott*, *F. J. Quinn*, and *E. E. Horton* for Peoria & Pekin Union Railway; *Thomas W. White*, *D. P. Connell*, and *L. P. Day* for Cleveland, Cincinnati, Chicago & St. Louis Railway Company and Pennsylvania Railroad Company; *W. J. Stevenson* for Lake Erie & Western Railroad Company; *O. P. Westervelt* for Toledo, Peoria & Western Railway and *S. M. Russell*, receiver; and *James A. Knowlton* for St. Louis, Springfield & Peoria Railroad Company.

O. B. Eddy for Peoria Association of Commerce; *W. T. Cornelison* for Peoria Board of Trade, Burlington Elevator Company, and

¹ This report embraces also Investigation and Suspension Docket No. 1596, Intermediate Switching Charges at Peoria, Ill.; No. 13110, Minneapolis & St. Louis Railroad Company v. Peoria & Pekin Union Railway Company; and Investigation and Suspension Docket No. 1455, Intermediate Switching Charges at Peoria and Pekin, Ill.

Mueller Grain Company; *James A. Fenelon* for Eighth District Coal Operators Association, Central West Coal Company, Crescent Coal Company, and Silver Creek Colliery Company.

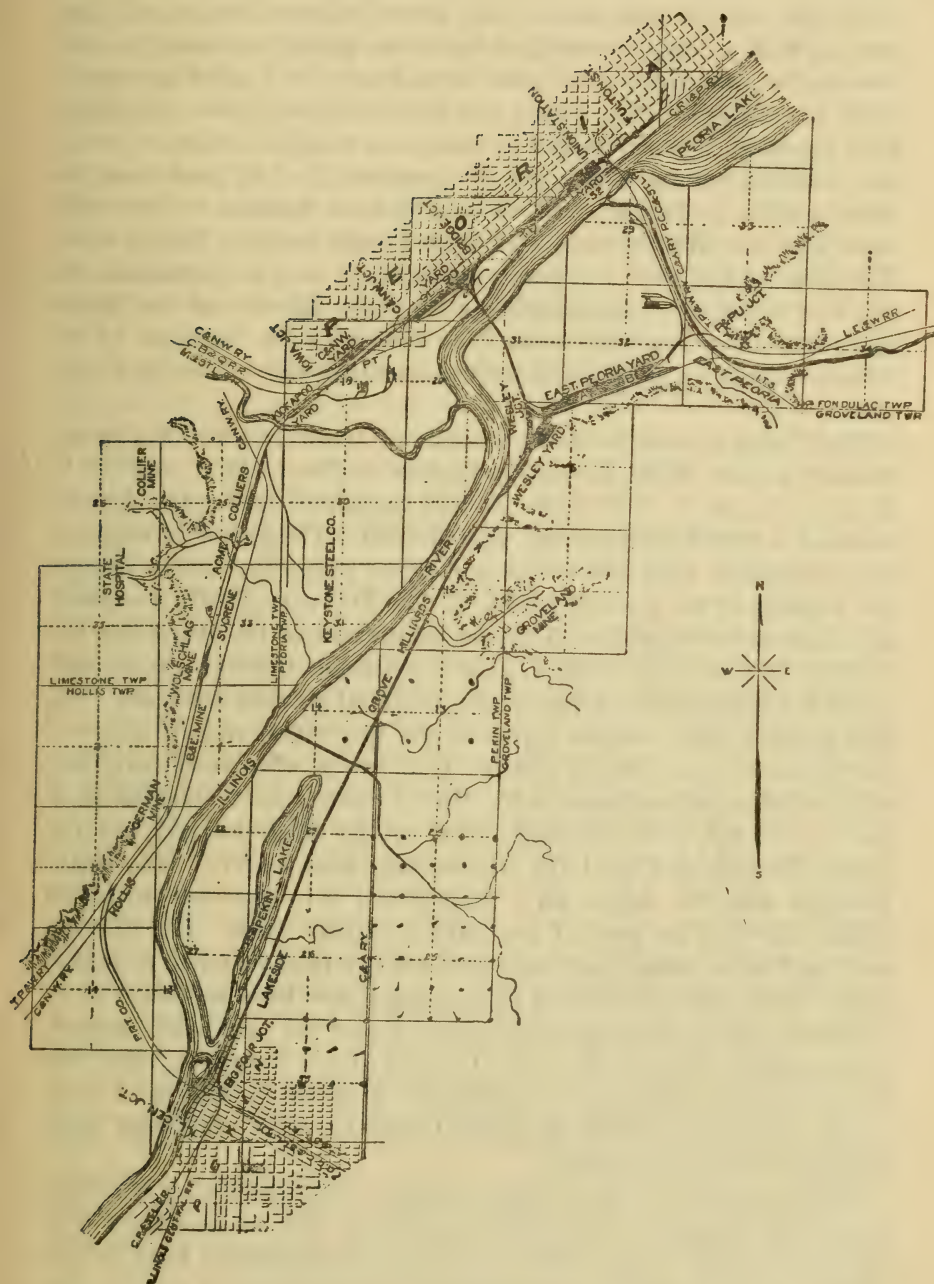
Clarence B. Cardy for Clark Coal & Coke Company.

REPORT OF THE COMMISSION

BY THE COMMISSION:

Certain phases of this matter which have to do chiefly with charges of the Peoria & Pekin Union, hereinafter referred to as the Union, for intermediate switching at and in the vicinity of Peoria, Ill., were considered in our former reports in No. 13110 and the related investigation and suspension cases, *Minneapolis & St. Louis R. R. Co. v. P. & P. U. Ry. Co.*, 68 I. C. C., 412, and *Switching Charges at Peoria*, 77 I. C. C., 43, wherein the terminal situation is explained in considerable detail. For convenience certain descriptive facts will be restated. All of the points referred to are in Illinois. Peoria is in Peoria County, on the west bank of the Illinois River. Directly across the river to the east in Tazewell County is what is known as East Peoria. Pekin is about 9 miles south of Peoria on the east bank of the river. The Peoria-Pekin switching district includes Peoria, East Peoria, and Pekin. East Peoria is within the Peoria switching district, but not within the municipal limits of Peoria.

As indicated by the opposite sketch, the Chicago, Rock Island & Pacific, hereinafter referred to as the Rock Island, enters Peoria from the northeast and the Chicago, Burlington & Quincy, the Chicago & North Western, and the Minneapolis & St. Louis, hereinafter referred to as the Burlington, the North Western, and the M. & St. L., respectively, enter from the northwest by lines practically parallel. The rails of the Rock Island, the Burlington, and the M. & St. L. terminate in Peoria. The North Western has a line extending to the south on the west side of the river. The rails of the Cleveland, Cincinnati, Chicago & St. Louis, the Chicago, Peoria & St. Louis, hereinafter referred to as the Big Four, and the C. P. & St. L., respectively, and the Illinois Central terminate in Pekin. The southern division of the Chicago & Alton, hereinafter referred to as the Alton, extends through Pekin to a junction with the Union in the vicinity of Grove. The Lake Erie & Western, referred to hereinafter as the Lake Erie, the Toledo, Peoria & Western, also known as the T. P. & W., the northern division of the Alton, and the Pennsylvania approach the Peoria district from the east, the latter two over the rails of the T. P. & W. None of these so-called east-side lines has rails into Peoria proper, although they hold them-



selves out to the public as serving Peoria. Entry into that city is effected by means of the facilities of the Union, which has a double-track line on the east side of the river between Pekin and East Peoria, with a bridge crossing at the latter point, and a single-track line on the west side of the river from Peoria to a point across the river from Pekin. The Union has also extensive yards and industrial trackage besides freight houses, team tracks, and other terminal facilities among which are the so-called P. & S. yard near the union station in Peoria, yards 90 and 91 some distance to the southwest, and the Wesley yard and East Peoria yard in East Peoria. The Peoria Railway Terminal, referred to as the Terminal, the stock of which is owned jointly by the Rock Island and the Alton, has a line extending southward from Peoria on the west side of the river to Pekin, in addition to certain terminal and industrial facilities.

The Union is conceded to be a common carrier and we have recognized it as such in *St. Louis, Springfield & Peoria R. R. v. P. & P. U. Ry. Co.*, 26 I. C. C. 226. It was organized under the general railroad act of Illinois in the fall of 1880. Thereafter it acquired by purchase or lease the tracks and other properties which became the nucleus of its present facilities. In February, 1881, it entered into contracts with the predecessors in interest of the Big Four, the T. P. & W., the C. P. & St. L., and the Illinois Central, which obligated the Union to perform certain terminal services for those lines and granted them certain rights in the properties and facilities of the Union. Contracts of similar tenor were afterwards executed with other steam railroads in the Peoria district, including the M. & St. L., but not with the Burlington or the Rock Island; and the North Western and the Lake Erie became stockholders. The Pennsylvania and the Alton have contractual arrangements with the Union but own no part of the latter's capital stock. The carriers serving Peoria under these contracts are commonly known as tenant lines. Some of the contracts have expired and have not been formally renewed, the tenants holding over under the provisions thereof. The contract with the M. & St. L. expired on March 31, 1921, and that company, instead of continuing its relationship with the Union, made arrangements with the Rock Island for such additional facilities as it deemed necessary.

The contracts provide that the tenant lines of the Union shall pay reasonable charges for transferring freight cars to and from connecting railroads at a uniform rate per car previously fixed by the Union, to be charged to all companies for such service without dis-

crimination, to approximate the actual cost of service as nearly as practicable, and to include charges for making up trains. These charges are commonly referred to as in-and-out charges and have varied in amount from time to time. Effective October 3, 1922, they became \$2.40 on through cars and \$2.70 on local cars. For some years they were carried in tariffs filed with us. On January 1, 1923, it is stated, the charges were reduced to \$2 on through cars and \$2.50 on local cars, and on February 18, 1923, the tariff publishing the rates was canceled by a supplement containing the explanation "For rates refer to individual contracts with tenant companies of the Peoria & Pekin Union Railway Company." Through cars, it should be explained, are defined as cars delivered to a connection of the Union, although final delivery may be within the switching district on the rails of the connection, and local cars as cars delivered on the rails of the Union. The tenants are assessed an industrial switching charge to and from industries on the Union, but pay no charges in addition to the in-and-out charge for movements to and from the freight house, team tracks, and Union stockyards.

The withdrawal of the M. & St. L. from its arrangement with the Union precipitated the present controversy. To appreciate the effects of the action of the M. & St. L. a brief description of the Union's method of operation with regard to interchange traffic is necessary. A train coming in over the Illinois Central, for example, through Pekin passes over the main line of the Union under Illinois Central power, for which the Illinois Central is obliged to make certain payments to the Union on a wheelage basis. After the train is delivered by the Illinois Central in the East Peoria yard of the Union, the locomotive is detached and proceeds to the Union's roundhouse. The train is then broken up by the Union and the cars segregated according to dispositions to be made. For each car handled the Union receives from the Illinois Central the in-and-out charge described above. Cars for the M. & St. L., during its tenancy, were assembled in cuts and taken over to the Bartlett yard of the M. & St. L. where, according to the contract, they, with other cars, were made up by the Union in train order for outbound movement. The M. & St. L. engine later was attached and the train sent out on the road. That, at least, was the operation in theory. The M. & St. L. insists that the Union did not perform its part of the contract in making up its trains and otherwise. It is unnecessary to consider that aspect of the matter. It is conceded that in so far as the contract between the M. & St. L. and the Union is concerned the former was within its rights in not renewing the contract. While the contract was in effect the Union collected from the M. & St. L. the

in-and-out charge on cars made up in trains for outbound movement by the M. & St. L. The result was that on a car coming in on the Illinois Central destined to a point on the M. & St. L. the Union received two in-and-out charges, one from the Illinois Central and the other from the M. & St. L. The practice was similar in the reverse direction. The effect was that the expense of transfer was divided. It is now divided in a similar manner as between tenant lines. After the withdrawal of the M. & St. L. the only revenue directly accruing to the Union from the transfer of through cars to and from the M. & St. L. was the in-and-out charge against the tenant line. Neither the Rock Island nor the Burlington, both non-tenant lines, have ever paid the Union for the interchange of through traffic to or from tenant lines.

For a time after the withdrawal of the M. & St. L. the matter was left at rest. But following a change in the management of the Union, an effort was made to obtain compensation from the M. & St. L., with the result that the Union established on short notice, effective August 30, 1921, a charge of \$4 per car for switching freight cars between the rails of the M. & St. L. at Peoria and the Union's tracks in its East Peoria yard, when the cars come from or are destined to points beyond the Peoria-Pekin switching district. Later the Union filed schedules proposing charges, effective December 16, 1921, for switching freight cars between the tracks of the Terminal and the Union's tracks in the East Peoria yard and also tracks of the Union in yards other than the East Peoria yard. The schedules were suspended and the proceeding disposed of in conjunction with an attack by formal complaint on the charge established against the traffic of the M. & St. L. We found that the Union was a common carrier and performed certain uncompensated intermediate services at Peoria and East Peoria, between the M. & St. L. and the Terminal, on the one hand, and the proprietary and nonproprietary tenants of the Union, on the other hand; that reasonable tariff charges might be assessed for such uncompensated services; but that the charges then effective to and from the rails of the M. & St. L., and those proposed to and from the Terminal were unjustly discriminatory and unduly prejudicial, in that no similar charges were assessed on traffic handled in intermediate service between the Burlington or the Rock Island and respondent's tenants. *Minneapolis & St. Louis R. R. Co. v. P. & P. U. Ry. Co., supra.* Thereafter the Union filed schedules to become effective July 1, 1922, proposing charges against traffic from and to the Rock Island and the Burlington but containing a note that the charges would not apply to switching service rendered tenant companies under tenancy contracts. These schedules

were suspended, found not justified, and this general investigation ordered. *Switching Charges at Peoria, supra.* The situation, then, is that there is a tariff on file providing for a charge applying to or from the rails of the M. & St. L. only.

In the interchange of traffic between carriers it is the ordinarily accepted practice for the receiving line to designate tracks within a reasonable distance of the intersection of its rails with those of a connecting carrier where cars will be received from the delivering line, and the latter places the cars on the tracks so designated. There is a tendency on the part of the witnesses to distinguish between the point of interchange and the point of delivery, the former being defined as the point where the tracks of the two lines actually connect and the latter as the place where, according to mutual agreement, the cars are deposited. Before the organization of the Union the Rock Island and the Burlington interchanged traffic on the west side of the river with the railroads operating the trackage there which later became a part of the Union facilities. The interchange was a reciprocal arrangement between the lines interested, according to the usual practice, and no charges were assessed for the service. After the creation of the Union the Rock Island and the Burlington interchanged traffic with the tenants of the Union through the medium of the latter but without the payment of intermediate charges. Deliveries by the Rock Island and Burlington were made in the yards of the Union on the west side of the river until 1913, when, at request of the management of the Union, the Rock Island and the Burlington began, and still continue, to haul cuts of cars going to the east-side lines over the Union's rails and bridge to its East Peoria yard. The Union, in turn, hauls cars for the Rock Island and the Burlington into their yards for some distance beyond the point of intersection. Although the M. & St. L. expresses willingness to do so, the Union does not permit the M. & St. L. to deliver cars in the East Peoria yard. The designated place of delivery for cars from the M. & St. L. is in yards 90 and 91. The M. & St. L. asserts that the Union selected that point for delivery to lend color to the claim that in hauling cars arriving on the M. & St. L. from yards 90 and 91 to the East Peoria yard it performs some service for the M. & St. L.

Many contentions and correlative arguments are advanced by the parties interested. The substance of the controversy, however, is this. The Union urges that it is a common carrier, independent in character, entitled on its own account to assess charges for its services. The Rock Island, the Burlington, and the M. & St. L., on the other hand, insist that in delivering traffic at the point desig-

nated by the Union they are performing everything required to be done by ordinary railroad practice; that any service performed or facilities furnished by the Union in the premises are for the benefit of the tenants; and that the present proceedings represent an attempt by the tenant lines to shift to the nontenants a portion of the expense of maintaining the terminal facilities used by the tenants. The suggestion is made on behalf of the Union that the M. & St. L. in withdrawing from the tenancy contract seeks to escape the burden of the interchange expense. The M. & St. L., however, disclaims such a purpose, and contends that as it has constructed yards, and is furnishing power and other terminal facilities, it now is doing for itself at its own expense that for which it formerly employed the Union.

As above indicated, none of the tenants, except the North Western, has any facilities whatever of its own in Peoria, and the lines of some reach no nearer than Pekin. The North Western has a yard in Peoria which is operated for its account by the Union under an arrangement supplementary to the general contract. The North Western, however, has no freight house, team tracks, roundhouse, or other facilities of that character, and uses those of the Union.

The contracts between the Union and its tenants serve as the foundation for many of the contentions advanced by the nontenants. The Union points out that the nontenants are not parties to the contracts and contends that the contracts are the concern only of those bound by their terms, and that the nontenants can not base rights upon or make claims under instruments to which they are not in privity. Without pursuing the argument further, we think it competent to examine the contracts in connection with other facts and circumstances for what light they may throw upon the status and character of the Union.

The contracts, generally speaking, deal with two subjects, one the acquisition of the right of user of certain facilities by the tenants, and the other the furnishing of transportation service to the tenants by the Union. The preamble of the original contract recites that the four railroad companies therein named—

for the more convenient and economical transaction of their business and the better accommodation of the public, desire to extend and improve their facilities in the city of Peoria * * * and to that end have caused to be organized and incorporated under the laws of the said state of Illinois, the said Peoria and Pekin Union Railway Company * * * the capital stock of which is to be taken, held and owned by the said four constituent companies.

The contract then proceeds to describe generally the properties the ownership or use of which had been acquired by the Union. Some of these properties were owned by the trunk lines which for-

merly served Peoria, but we deem it unprofitable to trace in detail the foreclosure sales and other transactions leading to the acquisition of these original properties of the Union. The welding together of various tracks and facilities into a terminal railroad for the more economical and convenient handling of terminal business is not unusual. A transaction of a somewhat similar nature is referred to in *Omaha Live Stock Exchange v. C., M. & St. P. Ry. Co.*, 69 I. C. C. 688, where it appeared that a stockyard company had taken over the tracks of certain trunk lines leading to the stockyards and thereafter had performed the switching service between the stockyards and the transfer tracks, assessing for that service a charge which was absorbed in part by the trunk lines.

The original contract which, as before indicated, in essential respects is substantially similar to later ones, describes the facilities which the Union is bound to furnish and maintain. Among them are main tracks, sidetracks, connections, and terminal facilities, a passenger depot, rolling stock, roundhouse accommodations, and freight houses. The contract provides in terms that the Union—

doth let, lease and demise unto * * * (the four railroads therein named), their successors and assigns, all and singular its said main tracks, side tracks, switches, turnouts, connecting tracks, round houses, freight houses, passenger depot, and all its terminal facilities in the cities of Peoria and Pekin * * *.

The habendum clause provides that the lessees shall severally have the right to use, among other things, the following: All main tracks of the Union between their terminals in the cities of Pekin and Peoria, and the necessary sidetracks for passing trains, in running their trains of every class over the same or any part thereof, *with their own engines and employees*, between Pekin and Peoria, and for the purpose of delivering and receiving their trains and cars to and from the Union, and to and from the Union passenger depot; the roundhouses together with necessary approaches; the freight house or houses and tracks connecting therewith; the Union passenger depot; and elevators, stockyards, and other property and facilities. Payment to the Union of \$22,500 per year in the nature of rental is stipulated to be held for payment of interest on the first-mortgage bonds of the Union. Provision is also made for payment to the Union of maintenance cost, apportioned on a wheelage basis, of the main-line tracks and facilities used by the trains and traffic of the tenants; of charges for the transfer service to and from connecting railroads; and for handling and switching loaded and empty cars to and from freight houses, warehouses, packing houses, stockyards, and other industries in the cities of Pekin and Peoria. The contract stipulates also that no stockholder shall transfer its holding of capital stock of the Union without the consent of all

other stockholders; that the board of directors of the Union shall be selected by the proprietary lines and that each shall at all times have equal representation on the board; that no managing officer of the Union shall be selected without the approval of each proprietary line; and that subordinate officers and employees shall be subject to peremptory discharge on request of any party to the contract.

The paragraph of the contract repeatedly referred to by parties herein reads:

The said lessees shall severally have the right to the use of all the transfer tracks, side tracks, switches, and turnouts and other terminal facilities of the first party (the Union) at the said cities of Peoria and Pekin, for the transfer of loaded and empty freight and other cars by the said first party from and to all freight houses, warehouses, packing houses, stock yards, grain elevators, distilleries, mills and other industries, and to and from the tracks and warehouses of other railroads, with any of which any of the tracks of the first party shall at any time be connected, whether such tracks, or any of them, shall be owned or held or in some other wise controlled by said first party; and the said party of the first part, for the consideration aforesaid, doth hereby covenant and agree, promptly and efficiently and without discrimination or partiality in favor of any company or the business thereof, to make such transfers of the loaded and empty freight and other cars of the said lessees respectively, the said first party hereby reserving unto itself the right to make transfers for all companies and persons desiring such services, without prejudice, however, to the business of the said several lessees, and said first party shall also make up and deliver on the main track all freight trains, and at the Union Passenger Depot all passenger trains of the said lessees respectively.

The contention of the M. & St. L. and those identified with it that the rails of the Union are in law and in fact the rails of the tenants can not be sustained. It is clear that the interest of the tenants in the properties of the Union can not be accurately or completely described as a leasehold. Moreover, if the contract were to be considered as giving the right to use as under a lease, the tenants would have the right to make use of as much or as little as they please. *Rock Island Railway v. Rio Grande Railroad*, 143 U. S. 596, 609.

From the paragraph of the contract last quoted and from other portions thereof mentioned it will be seen that the Union furnishes terminal facilities at Peoria which the tenants otherwise would lack, but that the Union in general is the operating medium for those facilities. The purpose of the Union to retain the transfer service for itself is perhaps more pointedly indicated in some of the later contracts, as, for example, the contracts of September 15, 1911, with the Lake Erie; of December 31, 1909, with the Alton; of February 2, 1914, with the Vandalia Railroad Company, predecessor in interest

of the Pennsylvania; and of December 1, 1911, with the North Western; which omit the reference to the use of transfer tracks and other facilities from the paragraph relating to transfer service and provide that the Union shall receive on its tracks and terminal facilities in or near the city of Peoria all loaded and empty freight and other cars of the lessee intended for transfer by the Union from and to all freight houses, warehouses, packing houses, stockyards, grain elevators, distilleries, mills, and other industries, and to and from the tracks and warehouses of other railroads. The tenants can not enter upon the Union properties and perform the terminal and intermediate services with their own power. The actual movement is to be performed by the Union. We find nothing in the contracts militating against the right of the Union to assess a transfer charge. The contracts, indeed, clearly contemplate that the Union shall be compensated for its services and the right of the Union to make transfers for all companies and persons desiring such services is expressly reserved.

In *Minneapolis & St. Louis R. R. Co. v. P. & P. U. Ry. Co.*, *supra*, we distinguished *So. Pac. Terminal Co. v. Int. Com. Com.*, 219 U. S. 498, and *Chicago, M. & St. P. Ry. v. Minn. Civic Assn.*, 247 U. S. 490, cited in support of the contention that the Union is a mere projection of the rails of the tenants' lines. We again refer to the latter case, which like the *Southern Pacific Terminal case* presented a question of discrimination between shippers. The court recognized the general principle that ownership alone in one corporation by another does not create an identity of corporate interest between the two companies, or render the stock-holding company the owner of the property of the other, or create the relationship of principal and agent or representative between the two; although it held that a mere fiction of corporate entity could not justify what otherwise would be unlawful discrimination. The court found that the Minneapolis Eastern, a terminal line the capital stock of which was owned jointly by the Chicago, Milwaukee & St. Paul and the Chicago, St. Paul, Minneapolis & Omaha, was in fact the completely controlled agency of the owning companies and that the fact that legal title to certain terminal or spur delivering tracks was in the Minneapolis Eastern could not become the warrant for permitting a charge upon shippers greater than they would be required to pay if the title was in the owning company. As pointed out in *Minneapolis & St. Louis R. R. Co. v. P. & P. U. Ry. Co.*, *supra*, the facts disclosed in that case are not similar to those here presented. While the proprietary lines are in a position to influence the policies of the Union, the record does not disclose that the Union has been reduced to the status of the Minneapolis Eastern, nor can the Union

be looked upon as a legal fiction devised to cover up discriminatory charges. The Union is a property of some size and does a very considerable business on its own account and in its own right. The decision of the Supreme Court in the *Minneapolis Eastern case*, as already indicated, was based upon what amounted to discrimination created by the fact that shippers located on the rails of the Minneapolis Eastern were charged for terminal service while those on the rails of the owning company were not charged for similar service. That situation is not here presented. The conditions are in a sense reversed, in that the endeavor is made to hold the Union as a part of the tenant lines in order that certain nontenants may escape an intermediate expense which others are paying. Our treatment of the Union Freight Railroad in *Boston Wool Trade Asso. v. Director General*, 69 I. C. C. 282, 290, likewise was based on the maintenance of unduly prejudicial charges.

The Burlington and those identified with it insist that the Union is the agent of the tenant lines, and *Chicago & A. R. Co. v. Peoria & P. U. Ry. Co.*, 250 Ill. 320, 95 N. E. 137, is cited. That case presented a question of liability for loss by theft of goods contained in certain cars transported by the Alton and transferred by the Union, as directed by the Alton, to the Water Street tracks in Peoria where the cars later were broken into and part of the contents stolen. Claims were paid by the Alton, and the cause represented an attempt by that carrier to recover over from the Union. The Supreme Court of Illinois held that the trial court and the appellate court were in error in holding the Union as a warehouseman or bailee for hire. After reviewing the contract between the Union and the Alton, the court concluded that the liability of the Union ended when it completed the service of hauling the cars to the Water Street tracks; that thereafter the cars were in possession of the Alton. That case can not be regarded as controlling in the present situation. It involved a question of property liability on shipments terminating at Peoria, as to which it is admitted that the Union completed the transportation service for the tenant.

Further in support of their theory of the case the Rock Island, the Burlington, and the M. & St. L. emphasize many circumstances said to indicate that the Union is operated as an agent or instrument of the tenant lines, from which they conclude that in the interchange service the Union acts for the tenant lines and not for its own account. They urge that the interchange business is handled in substantially the same manner as it would be handled if the rails and facilities of the Union were in reality those of the several tenant lines. They contend that the interchange between them and the tenant lines is direct and that they are performing their full duty under

railroad practice in delivering the cars where designated. The Rock Island, the Burlington, and the M. & St. L. insist that the in-and-out charge covers more than the breaking up or making up of trains for the tenants and that we were not justified in finding in *Minneapolis & St. Louis R. R. Co. v. P. & P. U. Ry. Co.*, *supra*, that the Union performs an uncompensated intermediate service. But the record discloses that the intermediate service is performed without expense to the Rock Island and the Burlington, and the M. & St. L. demands the same treatment. Only in the sense that the in-and-out charges are designed with some elasticity to make the Union whole from its operations can it be said that the Union is compensated.

The circumstances pointed out from which it is urged that the Union has submerged its identity and has become a mere facility of the tenants were fully considered in our former reports dealing with the Peoria situation. For the sake of convenience, settlement on interchange business is made by the trunk lines without the participation of the Union, and it is true that the Union, as a rule, is not shown in tariffs as a participating carrier in connection with the tenants as to business to and from Peoria, or as an intermediate carrier in joint rates through Peoria; nor does it seek to compete with the tenants even when it is shown as an originating carrier from Peoria. These circumstances do not appear to be of much force. They are sometimes revealed in the practices of other terminal lines.

Reference is made to the fact that in some tariffs published by the tenant lines and in the Official Equipment Register there are certain statements indicating a direct connection at Peoria between the tenant lines and the nontenant lines. The tariffs are not uniform in this respect. Some tariffs specifically show connections "via P. & P. U." The record indicates that where reference has been made to connections the information was intended to be conveyed that no intermediate charge is assessed against the shipper. The circumstances stressed by the Burlington and its associates do not destroy the identity of the Union nor make it for all purposes a facility of the tenants. As pointed out in *United States v. Brooklyn Terminal*, 249 U. S. 296, the relation of connecting carrier with the initial carrier frequently is that of an agent. But, as urged in behalf of the Union, the term "agent" is a broad one. An agency in respect to all matters does not necessarily flow from such a status concerning specific matters. The theory of agency advanced herein could as well be applied to many of the everyday transactions among common carriers. The Rock Island, for example, furnishes certain facilities at Peoria for the M. & St. L. and performs intermediate

service between the M. & St. L. and connections with the Rock Island, for which it assesses a charge, but it could hardly be said that the Rock Island thereby has become the agent of the M. & St. L. at Peoria so as to lose its identity. The carrier delivering shipments to industries on its line, for which service its charges are absorbed by the initial carrier, may be looked upon as an agent of the latter, in that it is completing a service which the initial carrier has taken upon itself to perform. Transactions of that character are common at Peoria and elsewhere. The Union in that aspect of the matter may be regarded as an agent of the Burlington when it makes deliveries to East Peoria industries for which its switching charge is absorbed by the Burlington out of the Peoria rate. So it is with regard to the intermediate service. The tenants and nontenants have established joint rates, but the Union furnishes an essential part of the service which the trunk lines have held themselves out to perform. There is no justification for the belief that the Union under these circumstances is acting for one of the parties to the arrangement to the exclusion of the other.

The Burlington and the Rock Island point out that since 1913 they have hauled cars with their own power to East Peoria for delivery to tenants, and maintain that in no view of the case can it be held that the Union performs any intermediate service in connection with such a movement. In accordance with usual railroad practice, the matter of making and receiving deliveries of cars is the subject of mutual agreement, each line having the right within reasonable limits to designate the point where cars will be received. Under existing arrangements between the Union and the Rock Island and the Burlington, respectively, the latter two carriers deliver cars in the East Peoria yard, and the Union in turn delivers cars to them in their respective yards some distance beyond the actual track connections. The Union has the right to insist upon receiving traffic from the Rock Island and the Burlington at or in the vicinity of the intersections of their rails in Peoria, to perform the service of transferring such traffic to East Peoria, and to receive compensation for that service. A voluntary reciprocal service arrangement whereby the respective carriers operate over the rails of each other to a greater or less extent does not affect these rights, and it is within the discretion of the parties to discontinue or modify such an arrangement if, because of lack of complete reciprocity or for some other good reason, it should appear desirable to do so. Upon these latter questions we express no opinion.

The St. Louis, Springfield & Peoria, an electric line referred to herein as the Traction, reaches the heart of Peoria by a line paralleling the T. P. & W. from a point near East Peoria. It has no

physical connections with any of the trunk lines in the city of Peoria. It has a track connection with the Union in Peoria near the passenger station, which for operating reasons is not available for the interchange of freight traffic. The Traction has also a physical connection with the Terminal in Peoria and through it with several trunk lines, but this connection, on account of operating difficulties, is said to be an impracticable one at present. As a result of our order in *St. Louis, Springfield & Peoria R. R. v. P. & P. U. Ry. Co., supra*, a contract was executed by the Traction and the Union relating to interchange of traffic between them, and a connection was constructed at East Peoria. This contract has expired but the parties thereto appear to recognize it as the general basis for operations. Charges paid by the Traction to the Union have fluctuated, the present charge being \$4.95 per loaded car, paid by the Traction for the transfer between it and both tenant and non-tenant lines in both directions. The charge of \$4.95 is not assessed when the traffic pays an industrial switching charge. The distance between the East Peoria yard and the Traction connection with the Union is approximately 0.5 mile. The Traction contends that the charge of \$4.95, and that of \$4 which was proposed by the Union in *Switching Charges at Peoria, supra*, are unreasonable and unduly discriminatory as compared with charges assessed by the Union for other services performed in the Peoria district, particularly the free service accorded the Rock Island and the Burlington. The Traction insists that, if the M. & St. L., the Burlington, and the Rock Island are entitled to the interchange service without cost to them, the Traction should be accorded like service upon similar terms. It is suggested that the Traction labors under an operating handicap in that its electric locomotives can not operate over the rails connecting steam roads to make deliveries, but it is pointed out that the common interchange tracks of the Traction and the Union are in the vicinity of the track connections, rendering it unnecessary for either railroad to enter upon the tracks of the other, and it is urged that no distinction can be based on the fact that the Traction operates by electricity. The Traction supports the proposition that the intermediate charge of the Union should be paid by the line delivering the traffic to the Union.

Much is made of the fact that the tenants, with the exception of the North Western, do not reach Peoria proper over their own rails, although they publish rates to and from Peoria. They have, however, arranged to carry traffic to and from Peoria proper in connection with and in certain respects by the use of the facilities of the Union. The M. & St. L. in that aspect of the matter is in much the same position as the tenants, as most of its properties are without the

municipal limits of Peoria. Indeed, it is only by virtue of the extension of the municipal limits within comparatively recent years that the M. & St. L. has any trackage whatever in Peoria. The M. & St. L. after its withdrawal from its arrangement with the Union was obliged to obtain the use of certain facilities of the Rock Island in order to do business in Peoria. It must not be supposed that East Peoria is remote from Peoria; the two localities are separated geographically only by the Illinois River. Peoria and East Peoria, including the East Peoria yard, are within the same switching district, and the trunk lines reach the various industries throughout the district by absorbing the switching charges within the limitations of their absorption rules. Thus it may be said that the M. & St. L., the Burlington, and the Rock Island to that extent serve East Peoria as well as Peoria. There are strong indications that in railroad practice no distinction is drawn between Peoria and East Peoria, the whole commonly being understood to be included in the term "Peoria." Certain rates and divisions are published as applying through Peoria, although the movement is entirely through East Peoria, and Peoria is usually shown as the point of origin or destination in the billing of shipments moving from and to industries in East Peoria.

It is a common experience that the growth in population and commercial importance of industrial and transportation centers has resulted in the construction of large yards removed from the centers of the business sections of such communities. Traffic, of course, must be moved to some place reasonably and conveniently situated for the purpose of the transportation. So far as interchange traffic is concerned the record is convincing that the east-side lines have completed their obligations relating to the line-haul service by bringing the cars to East Peoria. Moreover, the result would not be different if the east-side lines, by obtaining a trackage arrangement with the Union, were to haul cars past the convenient and suitable facilities of the East Peoria yard to some yard in Peoria. There still would be necessity for the intermediate service of the Union.

Some of the parties devote much attention to divisions, and at this point it may be stated that witnesses frequently offered the opinion that it is not a practicable or desirable solution of the problem for the Union to be made a party to joint rates from which it would be accorded divisions, their view being that a charge per car should be fixed to cover the service performed by the Union, to be absorbed by the trunk lines out of their rates or divisions. The concurrence of the Union in joint rates and the receiving by it of divisions, however, would not preclude the statement of the amounts of such divisions as charges per car.

The divisions through the Peoria gateway in many instances are the same as, and were made with relation to, those through Chicago. Divisions were negotiated without the participation of the Union and without considering terminal or intermediate expense at Peoria. The west-side lines, the M. & St. L., the North Western, the Burlington, and the Rock Island, as a rule have the same divisions through Peoria. The North Western, it will be recalled, is a tenant of the Union, as was also the M. & St. L., or rather its predecessor in interest, the Iowa Central, when the divisions were negotiated.

The Burlington and the Rock Island state that their divisions were established when they were paying no intermediate charge, and that their divisions are net to them at Peoria as distinguished from the Peoria district. They contend that the effort to impose an intermediate switching charge is in effect an indirect attempt to reduce their divisions for the benefit of the east-side tenant lines. The argument is advanced that a double charge is sought to be collected, in that compensation is asked for a service between Peoria and East Peoria included in the divisions accorded to the east-side lines, for which the Union, it is contended, is compensated under the contracts. It is apparent that the position of the Burlington and Rock Island with respect to divisions does not assist the M. & St. L., as the latter, or its predecessor in interest, was a tenant and clearly was bearing a part of the intermediate expense when the divisions were arranged. Consequently, if the payment of intermediate charges by the Burlington and Rock Island should be regarded as a disturbance of existing divisional arrangements, the withdrawal of the M. & St. L. and its refusal to pay any part of the intermediate expense served to that degree to increase its divisions.

There is some substance to the position of the Burlington and the Rock Island that payment to the Union for intermediate service would result in a measure in the diminution of their divisions. *Reciprocal Switching at Kansas City*, 68 I. C. C. 591, 596. Manifestly such payments would come out of their divisions of joint rates or from their locals or proportionals in case of combinations on Peoria. But that would be merely incidental. While divisions, in the first instance, are properly the concern of the carriers, we have certain jurisdiction with regard to them, the exercise of which requires the consideration of many factors not adequately covered by the present record. This deficiency precludes a consideration of the matter of divisions at this time. We also have jurisdiction, however, over discriminations by carriers against their connections as well as against shippers. *Pennsylvania Co. v. United States*, 236 U. S. 351, *St. Louis, Springfield & Peoria R. R. v. P. & P. U. Ry. Co.*, 93 I. C. C.

supra. Our power in the premises is not circumscribed or limited because in the exercise thereof the matter of divisions incidentally may be affected. If readjustment of divisions should be sought as a result of the present case, steps may be taken to that end, and if necessary the matter may be again brought to our attention. For the present we consider the immediate problem at Peoria.

The record does not lack indicia of unjust discriminations and undue prejudices in the present Peoria situation. We have already found in *Minneapolis & St. Louis R. R. Co. v. P. & P. U. Ry. Co.*, *supra*, that assessing a charge for the interchange service between East Peoria and the rails of the M. & St. L. and of the Terminal, while contemporaneously performing a similar interchange service from the rails of the Rock Island and Burlington, respectively, without charge, would be unjustly discriminatory and unduly prejudicial and we find no occasion to disturb that finding. No valid distinction can be drawn between the Burlington and the Rock Island, on the one hand, and the M. & St. L., on the other, with regard to this interchange service. It is true that the M. & St. L. formerly was a party to the Union contracts but it has withdrawn therefrom, as admittedly it had the right to do, and has acquired other terminal facilities and in that respect is in somewhat the same position as the Burlington and the Rock Island. The M. & St. L. pays the Rock Island for the intermediate service from its rails to the rails of the Burlington while denying the right of the Union to assess a charge from the rails of the M. & St. L. to connections with the tenants. The right of the Union to assess an intermediate charge between the so-called nontenants is recognized. The circumstances of carriage are not shown to be materially different between nontenants on the one hand and tenants and nontenants on the other. Again, both the Rock Island and M. & St. L. have arrangements for bearing the intermediate charge of the Terminal, competitor of the Union, between their respective lines and the Alton. It is interesting to note that the Rock Island, although with the Alton a joint owner of the Terminal, makes little use of the facilities of the Terminal for intermediate service because, the record indicates, it is considered more advantageous to use the services of the Union without charge. The Traction which, like the Rock Island and the Burlington, has its own terminals in Peoria, is assessed an intermediate charge in each direction on interchange traffic.

The Union endeavors to show that the expansion of its facilities has been of benefit to the Rock Island and the Burlington as well as to the tenants, in that the Rock Island and the Burlington have been able to handle their increasing business in Peoria over a period of years without greatly enlarging their facilities in Peoria. This

theory is sharply opposed by the Burlington and the Rock Island, the facilities of which, it is insisted, are sufficient for their ordinary needs. It is uncertain whether the development of the Union has been of particular benefit to the Rock Island and the Burlington and has made it possible for them to serve Peoria with properties otherwise inadequate, but it is clear that the expansion of the Union and its facilities has been of marked benefit to the public.

Representatives of commercial and shipping interests of Peoria are not interested in the controversy among the trunk lines as to who shall bear the intermediate charges, but they point out that, as indicated in *Switching Charges at Peoria, supra*, the present absorption rules of the carriers are not broad enough in all cases to cover the intermediate charges of the Union, and they ask that we approve nothing which will result in increased charges to shippers. It is generally agreed that in the case of joint rates applying via Peoria the intermediate charge of the Union could not, in the absence of appropriate tariff provisions, be shifted to the shipper, as the participating carriers would be obliged to protect their joint rates. There are also instances where the Union is shown as a participating carrier to and from Peoria.

The tenant lines were made parties to the present record, and their respective positions have been developed. In general, they find common ground with the Union in urging that the intermediate expense should be borne by each line in one direction, that is, by the delivering line. With regard to what should be the practice at Peoria, stress is laid upon *U. S. War Department v. A. & S. Ry.*, 77 I. C. C. 317, 359, where it is said:

It is the usual practice of rail carriers participating in joint rates to divide the switching expense when the services of an intermediate carrier are utilized in effecting interchange, the switching charge being absorbed by one or the other of the carriers according to the direction in which the traffic moves.

The North Western has a tariff provision specifically covering intermediate transfer as indicated by the following:

Joint through rates applying via Peoria or local or proportional rates to Peoria will include the cost of transfer or intermediate service on all freight delivered to other lines at Peoria.

The position of the Alton is not entirely in accord with that of the other tenant lines. Relations between it and the Union are decidedly inharmonious. Disputes exist with respect to the measure and the legality of charges assessed against the former and other matters, some of which are now before the courts. Negotiations are under way looking toward the execution of a new contract between the Union and the Alton to replace the one which has expired. The Alton and the Terminal, a competitor of the Union for interchange

business, take many exceptions to the Union's form of contract, and the Alton asks us to fix the terms and conditions upon which the Alton may use the terminal facilities of the Union.

The Alton contends that under section 1(15) of the interstate commerce act we have the power to fix the terms and conditions under which the Alton may use the facilities of the Union. That portion of the act, however, relates to emergencies, and the present situation is not shown to be an emergency within the meaning of the act. By section 3(4) we are empowered in a proper case to require the use of terminal facilities by a carrier other than the owning carrier. But we are of the view that a record has not been made justifying the exercise of our jurisdiction in that regard. Negotiations between the Union and the Alton are still pending, and, in the event they fail, the matter of the use of the Union's facilities can be brought up in an orderly manner by a proper proceeding.

There is a tendency on the part of representatives of several tenants to advocate, in a measure at least, the abandonment of the contracts so far as they relate to transportation service. The suggestion is offered that charges for transportation service should be prescribed by published tariffs rather than by contracts. The witnesses, however, are not entirely in accord as to what should be considered transportation charges. Some are of the belief that the service of breaking up and making up of tenant's trains should be considered as on a basis different from the interchange service, provision to be made for the former by contract and for the latter by tariffs. Others are of the opinion that the service of making up and breaking up trains is merely incidental to and should be included in switching charges.

We have found that the Union is an independent common carrier. As such it is entitled to assess reasonable and otherwise lawful charges for transportation services which it renders. Such charges should be filed and published in accordance with the provisions of section 6 of the act. Ordinarily the service of making up and breaking up trains is an operating incident, compensation for which is included in the transportation rate. In view of the situation here existing, however, where the make-up and break-up service is rendered in some instances and not in others, and in still others is the only service performed by the Union, it is our opinion that the charge for that service should be separately stated. Where the Union performs an intermediate service in connection with traffic moving through Peoria at joint rates, it should concur in such joint rates and receive divisions thereof, the divisional arrangements to be so adjusted as to, in effect, result in the absorption of the Union's division by the line that delivers the traffic to it. This overrules *Conf. Ruling 341*.

We further find that the charges proposed from the rails of the Terminal and the practice of the Union in assessing charges for the interchange service between connections with its tenants and the rails of the M. & St. L. and the Traction, while contemporaneously performing a like service between connections with its tenants and the rails of the Burlington and the Rock Island without charge, are unjustly discriminatory and unduly prejudicial against the M. & St. L., the Terminal, and the Traction, and that increased charges to shippers under joint rates through Peoria or under combination rates breaking on Peoria have not been justified.

The principal parties to the record have been so concerned with what were conceived to be their rights in the premises that slight interest apparently has been shown in the amount of the charges for the services of the Union. While not unmindful of the controversial character of these proceedings, we believe that the existing unsatisfactory terminal situation at and near Peoria can be corrected by the carriers by the exercise of a spirit of mutual accommodation such as has been displayed at other important terminals. No order will be entered at this time, but the carriers will be expected to arrange promptly for the solution of existing Peoria terminal difficulties along the lines indicated herein. The record will be held open for 60 days for this purpose. If the matter can not be rectified, it should be brought to our attention before the expiration of this period for further action in the premises.

CASE OF CLARK COAL & COKE COMPANY

The Clark Coal & Coke Company filed a petition in intervention and introduced some testimony directed against the local coal rates of the M. & St. L. The Clark Company's mines are located without the Peoria switching limits on the rails of the M. & St. L. about 3.5 miles from Iowa Junction in Peoria. It must sell its coal in competition with mines located on the Terminal and the Union. The M. & St. L. applies local rates for the movement to Peoria even when the shipments are destined beyond. The Clark Company maintains that the service performed is essentially a switching service and that the rates of the M. & St. L. are unreasonable and unduly prejudicial as compared with a switching charge of \$6.30 per car maintained by the Terminal and the Union from mines on their lines to connections with other lines at Peoria and East Peoria for movement beyond. The M. & St. L. points out that it has no control over the charges of either the Terminal or the Union, and its position in general is that the switching charge of those lines is too low and that the Union in moving this traffic on what is said to be a low basis is ignoring an important source of revenue.

The evidence in this matter throws no light on the questions raised by this investigation, and we are of opinion that the relief prayed is not properly within the scope of this proceeding.

HALL, *Chairman*, concurring:

In the main I am in accord with the majority findings, but to my mind the Union in some instances is acting for one of the parties, not for both, and on traffic brought into the Peoria-East Peoria switching district by the respective carriers the M. & St. L., Terminal, and Traction are not unduly discriminated against, or unduly prejudiced, by reason of the existing interchange arrangements of the Burlington and Rock Island.

The principle underlying the majority conclusions is that it is the duty of the line-haul carrier bringing through traffic into the Peoria-East Peoria switching district to effect delivery thereof to the line-haul carrier which is to take the traffic out of that district. All of the service now being performed by the Union on westbound traffic interchanged with the Burlington and Rock Island is obviously performed only for the east-side lines, because the latter are charged with the delivery. In the reverse direction the Burlington and Rock Island perform the interchange service themselves by delivering the cars directly into the East Peoria yard. There the line-haul service of the east-side lines begins and nothing further remains to be done to effect the interchange. There also the Union makes up outgoing trains for the east-side lines, and the breaking up of the cuts received from the Burlington and Rock Island is merely an incident of that make-up under the existing arrangements.

The Union performs no switching on such eastbound traffic and it can not properly assess a switching charge therefor against those carriers. This situation is clearly distinguishable from that obtaining with respect to traffic brought into this switching district by the M. & St. L., Terminal, and Traction. It is likewise the duty of the latter lines to effect the interchange of such traffic with their connections. They do not themselves perform the interchange service, and they should compensate the Union therefor if the Union performs it. The M. & St. L., Terminal, and Traction are not unduly prejudiced by having to pay the switching charges of the Union for its intermediate service in completing delivery of through traffic from those lines to their connections in the switching district. The findings of unjust discrimination against and undue prejudice to those lines should be confined to the reverse movement and affect only interchange-switching charges assessed by the Union against those lines on through traffic which it brings to them as an inter-

mediate switching carrier in completing delivery by and for their connections in the district.

I am not persuaded that switching services in terminals on through traffic may not properly be covered by switching charges published as such and absorbed in whole or in part by the line-haul carriers. To require that such switching should in all instances be covered by a joint rate in which the switching carrier is a participant with the line-haul carriers and is compensated by divisions of the joint rate seems to me an unnecessary refinement, not justified by experience, supported by this record, or imposed by law. It is therefore my view that Conference Ruling 341 should not be abrogated, or overruled as is done by the majority.

93 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 2160
IMPORTED WOOL FROM BOSTON AND NEW YORK TO
LA PORTE AND MISHAWAKA, IND.

Submitted October 1, 1924. Decided October 21, 1924

Proposed increased rates on South American and Australian imported wool in the grease, in machine-compressed bales, in carloads, from Boston and Lowell, Mass., New London, Conn., and New York, N. Y., to La Porte and Mishawaka, Ind., found justified. Order of suspension vacated and proceeding discontinued.

W. W. Meyer and W. J. Larrabee for respondents.

Butler, Lamb, Foster & Pope and Karl D. Loos for protestant.

REPORT OF THE COMMISSION

DIVISION 4, COMMISSIONERS MEYER, EASTMAN, AND POTTER

BY DIVISION 4:

By schedules filed to become effective June 23, 1924, respondents seek to cancel the carload rates from Boston and Lowell, Mass., New London, Conn., and New York, N. Y., to La Porte and Mishawaka, Ind., applicable exclusively to wool in the grease, in machine-pressed bales, imported from South America and Australia. Upon protest of Samuel Fox's Sons, Incorporated, operating the La Porte Woolen Mills, the schedules were suspended until November 20, 1924. Rates are stated in cents per 100 pounds.

At the present time there are three carload rates on wool in the grease from Boston and New York to La Porte, viz, (1) the third-class rate of 90.5 cents, minimum 16,000 pounds, applicable to all wool in the grease, irrespective of the place of production or the character of the package, (2) the rate of 72.5 cents, equal to rule 26, minimum 32,000 pounds, subject to rule 34, applicable to all wool in the grease, irrespective of the place of production when in bales compressed to a density of not less than 19 pounds per cubic foot, and (3) the commodity rate of 63.5 cents, equal to the fourth-class rate, minimum 32,000 pounds, applicable exclusively to baled South American and Australian wool in the grease and carrying no density requirement.

The last-named rate was originally established pursuant to our order in *Fox's Sons v. B. & A. R. R. Co.*, 49 I. C. C. 656. The rate was made applicable to Mishawaka to comply with the long-and-

short-haul clause of the fourth section. By the schedules under suspension respondent proposes to apply on wool in the grease, imported from South America and Australia, from the points of origin involved, rates of 72.5 cents to La Porte and 71 cents to Mishawaka, equal to rule 26 rates, minimum 32,000 pounds, which rates now apply on wool in the grease generally, whether of domestic or of foreign origin, when in bales compressed to a density of not less than 19 pounds per cubic foot. The South American and Australian wool is imported in machine-compressed bales which would always meet the density requirement of 19 pounds per cubic foot.

Respondents seek to justify the proposed increases upon the ground that wool in the grease, in bales of the same density as South American and Australian wool, now moves under rule 26 rates from Boston and New York to all known points of consumption in official territory. They assert that the rate in question to La Porte, although fixed by us, is unreasonably low and gives undue preference to South American and Australian wool as against wool imported from other foreign countries and as against domestic wool, and unduly prefers La Porte as against other consuming points in official territory, particularly Cleveland, Ohio.

Respondents assert that there is no logical reason for preference of South American and Australian wool as against wool imported from China, East India, Egypt, England, Iceland, New Zealand, Russia, and Turkey. Some of these wools are compressed to a greater density than South American and Australian wool, notably China wool. The record indicates that the greater part of imported wool is in bales compressed to a density of 19 pounds per cubic foot and that it readily loads to a minimum of 32,000 pounds. Respondents' tariffs provide for the loading of imported freight at their piers without charge.

The points to which wool in the grease is shipped from New York and Boston, west of New England, are La Porte, Mishawaka, Cleveland, Jamestown, and Falconer, N. Y., Camden and Passaic, N. J., and Bristol and Philadelphia, Pa. To all of these points the rates from Boston and New England have been on the basis of rule 26 since March 1, 1923, except as to the traffic here involved. Prior to that date the rates were on the third-class basis. While the rates from Boston and New York to New England points have heretofore been and now are on a fourth-class basis generally by virtue of exceptions to the classification, respondents have filed tariffs canceling such exceptions. The cancellation was suspended and found justified in *Wool between New England Points*, 92 I. C. C. 236. The effect of such cancellation will be to apply rule 26 rates from New York and Boston to points in New England on all wool in

the grease compressed to a density of 19 pounds per cubic foot. Rule 26 rates have also been in effect for more than a year on wool of the same character from Philadelphia to Boston, Graniteville, Holyoke, and Lawrence, Mass., Jamestown, Passaic, Bristol, and Cleveland, and other points in official territory.

The movement of wool from Boston, which is the principal wool market in this country, to La Porte is small in comparison with the movement to other consuming points. A check of the tonnage moving from Boston during the period July 1, 1922, to February 28, 1923, inclusive, over the Boston & Maine, Boston & Albany, and New York, New Haven & Hartford Railroads, was as follows:

	Pounds
To La Porte, Ind.....	220,000
To Cleveland, Ohio.....	4,500,000
To Jamestown, N. Y.....	4,500,000
To Camden, N. J.....	360,000
To Passaic, N. J.....	2,000,000
To Prescott, Pa.....	240,000
To Philadelphia, Pa.....	7,000,000

The movement to La Porte was less than 2 per cent of the movement to the points named. Between January 1, 1924, and the date of the hearing in this case, July 21-22, 1924, the only movement from Boston to La Porte was two carloads of domestic wool in bags, weighing 27,506 and 25,425 pounds, which moved under third-class rates. No movement to Mishawaka was shown.

In *Boston Wool Trade Asso. v. A. & S. Ry Co.*, 64 I. C. C. 365, the ratings on wool were under attack. In that case we said:

In our judgment the rating of third class, minimum 16,000 pounds, is well suited to the wool produced in official territory, when shipped in bags or sacks; and the rating of fourth class, minimum 24,000 pounds, is likewise well suited to the wool produced in western territory when similarly shipped. Wool compressed to a high density in machine-pressed bales is entitled to relatively lower rates, but this is a matter which is provided for in western territory by the existing commodity rates, and which can and should be provided for in official territory, in the exceptional cases where it is practicable to ship in large quantities per car, by the establishment of similar commodity rates, following the precedent of *Fox's Sons v. B. & A. R. R. Co.*, *supra*.

The proportional commodity rates from the Mississippi River crossings on wool in the grease, in bales, compressed to a density of 19 pounds per cubic foot, established as the result of the *Wool Investigation*, 23 I. C. C. 151, were also attacked in this case, but we found them to be reasonable, although they were higher than the contemporaneous fourth-class rates to Boston. In *Boston Wool Trade Asso. v. B. & A. R. R. Co.*, 77 I. C. C. 431, the complaint attacked rates on wool in the grease, in sacks, from points in Iowa and Missouri to Boston. The attack was directed principally

against the factor applying east of the Mississippi River and sought a factor east of the river not in excess of the proportional fourth-class rate. In that case, we said:

While we are not persuaded by this evidence that the present proportional rate of 92 cents, minimum 24,000 pounds, is unreasonable for a haul from the Mississippi River to Boston, we do think that it warrants the conclusion that this rate is high enough to apply, and should be made to apply, from the west bank rather than the east bank of the river.

In *Swift & Co. v. Director General*, 66 I. C. C. 409, we found the rates on pulled wool in the grease, in machine-compressed bales, from Chicago to points in trunk-line territory and New England unreasonable to the extent that they exceeded rule 26 rates, minimum 32,000 pounds. In that case, we said:

In no case, except *Fox's Sons v. B. & A. R. R. Co.*, *supra*, have we prescribed carload commodity rates as low as fourth class for application on wool in the grease within Official territory.

In *Imported Wool from New York and Boston*, 80 I. C. C. 309, the respondents proposed to cancel the commodity rate on South American and Australian wool here in question to La Porte and substitute therefor rates on the basis of rule 26. In that case we found the proposal not justified. The principal ground for the decision in that case was that the respondents did not propose to increase the rates on wool in the grease from the ports to points in New England which were generally on the basis of fourth class, minimum 16,000 pounds. Respondents now propose to cancel the New England rates referred to in *Wool between New England Ports*, *supra*. In *Cleveland Worsted Mill v. B. & O. R. R.*, Docket 15623, now pending, complainant seeks a commodity rate on South American and Australian wool from Boston and New York to Cleveland, similar to the rate now in effect from those points to La Porte.

In *Wool Rates Investigation, 1923*, 91 I. C. C. 235, after an exhaustive investigation, we found the present and proposed rates on wool in the grease, in sacks, in carloads, from western territory to Boston and north Atlantic ports unreasonable to the extent that they exceeded a distance scale of rates. The lowest rate in the scale is \$1.40 for distances of 1,500 miles and under. We further found that rates based on 85 per cent of the rates under this scale would be reasonable on wool in the grease, in bales, compressed to a density of not less than 19 pounds per cubic foot. The rate for 1,500 miles and under on baled wool would, therefore, be \$1.19. The short-line distances from Boston and East Boston to La Porte are 939 and 966 miles, respectively. East Boston is the import terminal of the Boston & Albany. Under the distance scale rates increase 5 cents

for each 50 miles from 1,500 to 2,000 miles. If the same rate of progression on baled wool were used from 1,000 to 1,500 miles, the rate for 1,000 miles would be 69 cents. This is somewhat lower than the proposed rate from Boston and New York to La Porte of 72.5 cents.

Comparison of values of South American wool with domestic wool is difficult because of the different grades in the various wools, the amount of shrinkage, and the import duties. The present import duty is 31 cents per pound on the scoured content of the wool. Respondents have made a comparison of values based upon quotations from a trade journal which indicate that the values at Boston of wool in the grease in March, 1923, were as follows: American wool, from 40 to 72 cents; Australian wool, from 37 to 73 cents; territory wool, from west of the Mississippi River, 18 to 46 cents per pound. Protestant's exhibits indicate the value of South American and Australian wool in the grease, in the years 1919 and 1921, inclusive, to be from 45 to 83 cents per pound. No valuation for domestic wool during these years is given.

Protestants relied solely upon our former decisions in *Fox's Sons v. B. & A. R. R. Co.*, and *Imported Wool from New York and Boston, supra*. The record in the latter case was introduced in evidence in this proceeding.

In *Boston Wool Trade Asso. v. B. & A. R. R. Co., supra*, we prescribed a rate of \$1 on wool in the grease, in sacks, from Bonaparte, Iowa, to Boston, 1,300 miles, yielding approximately 15 mills per ton-mile and 18 cents per car-mile. If we assume that the rate on wool in machine-compressed bales, density 19 pounds per cubic foot, should be 85 per cent of this rate, minimum 32,000 pounds, the earnings under a rate of 85 cents would be approximately 13 mills per ton-mile and 21 cents per car-mile. The earnings under the proposed rate from Boston, using a distance of 939 miles, would yield 15 mills per ton-mile and 24 cents per car-mile.

Upon the present record we find that the suspended schedules have been justified. An order vacating the order of suspension and discontinuing this proceeding will be entered.

INVESTIGATION AND SUSPENSION DOCKET No. 2162¹IRON AND STEEL ARTICLES IN MIXED CARLOADS TO
POINTS IN SOUTHWEST

Submitted October 16, 1924. Decided October 25, 1924.

Proposed elimination of wire, nails, and staples from list of iron and steel articles, in carloads, from St. Louis, Mo., and other defined territories and from Shreveport, La., to Texas, Oklahoma, and New Mexico points, and between points in Texas on interstate traffic found not justified. Suspended schedules ordered canceled.

George Thompson, A. H. Kiskaddon, J. R. Bell, M. G. Roberts, F. E. Andrews, C. S. Burg, and A. B. Enoch for respondents.

Ernest Price, Ed. P. Byars, L. M. Hogsett, Bert Beall, and A. L. Reed for Texas Wholesale Hardware Jobbers Association, Fort Worth Freight Bureau, Fort Worth Chamber of Commerce, Houston Chamber of Commerce, Beall Hardware Company, and Dallas Chamber of Commerce; *J. McA. Sample* for Texas Carnegie Steel Association; *W. H. Dodge* for American Steel & Wire Company; *John W. Daniel* for Peden Iron & Steel Company; *A. R. Kennedy* for Pittsburgh Steel Company; *Jas. L. Osborne* for American Steel & Wire Company; *G. H. Zimmerman* for Wm. Cameron & Company, Incorporated; *A. E. Singleton* and *F. Wm. Klos* for Wheeling Steel Corporation; *R. G. Hyett* for Lumbermens Association of Texas, Southwestern Lumbermens Association, Foster Lumber Company, Black Hardware Company, Tennison Manufacturing Company, and Texas Hardware & Implements Association; *H. Y. Taylor* for Port Arthur Chamber of Commerce & Shipping; *J. W. Hall* for Texas Hardware & Implements Association; and *E. C. Price* for Nash Hardware Company and Texas Hardware Jobbers Association.

REPORT OF THE COMMISSION

DIVISION 4, COMMISSIONERS MEYER, EASTMAN, AND POTTER

BY DIVISION 4:

By schedules filed to become effective June 22, 1924, and later dates, respondents proposed to eliminate wire, nails, and staples from

¹ This proceeding also embraces Investigation and Suspension Dockets No. 2205, Iron and Steel Articles in Mixed Carloads to Points in Southwest (2); and No. 2227, Iron and Steel Articles in Mixed Carloads to Points in Southwest (3).

the list of iron and steel articles permitted to be shipped in mixed carloads at commodity rates from St. Louis, Mo., other defined territories, and Shreveport, La., to Texas, Oklahoma, and New Mexico points, and between points in Texas on interstate traffic. Upon protests filed by the Lumbermens Association of Texas, Wm. Cameron & Company, Incorporated, and various other shipping interests of Texas the schedules were suspended until October 20, 1924, and later dates. The respondents voluntarily postponed the effective dates of certain of the schedules so that none of them will take effect prior to December 7, 1924. The issues in Nos. 2205 and 2227 are the same as in No. 2162 and they will be disposed of in this report. Destinations in Texas are typical of the rate situation presented with respect to the mixture of wire, nails, and staples with iron and steel articles.

Wire, nails, and staples were included in the list of iron and steel articles to Texas points from defined territories effective June 16, 1922, and from Shreveport March 1, 1924. This mixture was established to adjust the through rates in many instances to meet combinations on Texas border points, to secure to the Texas carriers some of the business that was moving from the East principally by water through the Gulf ports, and generally to stimulate building and industry. Notes are contained in the proposed schedules, of which the following is representative: "Five hundred (500) pounds of nails and iron or steel washers may be included with shipments of articles making reference to this note." The proposed elimination of wire, nails, and staples from the commodity items in issue would result in materially increased charges on shipments of iron and steel articles containing more than 500 pounds of wire, nails, and staples. Protestants state that the proposed mixture of only 500 pounds of nails would be of no value, as the quantity is wholly insufficient to meet commercial necessities.

It is testified that the rates on mixed carloads of wire, nails, and staples are less than on mixed carloads of iron and steel articles, including wire, nails, and staples. This is true to Texas common points, to which the rates from St. Louis, for example, are 3.5 cents, per 100 pounds, more on the general class of iron and steel articles than on the mixture of wire, nails, and staples shipped separately. It is not true to other points in Texas, the rates from St. Louis to the El Paso group, for instance, being 3.5 cents higher on mixtures of wire, nails, and staples than on mixed shipments of iron and steel articles including wire, nails, and staples. If the proposed schedules become effective, mixed shipments as now made would be subject, as a maximum, to the highest rate and highest minimum weight of

any article in the shipment which, in most instances, would be fifth class, minimum 36,000 pounds.

In seeking to justify the elimination of wire, nails, and staples from the list of iron and steel articles that may be shipped in mixed carloads at commodity rates, respondents testified that they were actuated by the desire to make the tariffs in the southwestern territory uniform as to descriptions, and that the proposed schedules represent one of the first steps in that direction. They observe that in *Memphis-Southwestern Investigation* 77 I. C. C. 473, we did not include wire, nails, and staples in either the list of merchant or structural iron upon which specific scales of rates were there prescribed. The question, however, of including wire, nails, and staples with iron articles was not an issue in that case. The scales of rates there prescribed were designed merely to apply upon the mixture of articles as they then existed in the tariffs. The carriers have recently proposed for the Memphis-Southwestern territory a specific scale of rates on wire, nails, and staples, which rates are now under suspension.

It is stated that the maintenance of the present rates to the Memphis-Southwestern territory may continue fourth-section departures at certain border points if the schedules here proposed do not go into effect, but the evidence is incomplete with respect to this feature. The fourth-section order issued in connection with that proceeding required the carriers to remove such departures as were produced by the establishment of the rates prescribed or approved in that investigation. Reference is also made to the mixtures of iron and steel articles in *Railroad Commission of Louisiana v. A. H. T. Ry. Co.*, 48 I. C. C. 312, and *Natchez Chamber of Commerce v. L. & A. Ry. Co.*, 52 I. C. C. 105, but the propriety of mixing wire, nails, and staples with other iron articles was not in issue in those cases.

Respondents insist that the mixture of iron and steel articles which includes wire, nails, and staples, to Texas points, is entirely too large, and if allowed to remain in effect will probably prompt various interests in the territory covered by *Memphis-Southwestern Investigation*, *supra*, to request the same broad mixtures, which may spread possibly to include tacks, stovepipe hangers, barn-door hangers, and other hardware of similar nature. It is urged that if such requests were met the revenues of the carriers would be reduced. Effective June 30, 1924, the mixture of wire, nails, and staples with special-iron articles was prohibited by tariff provision from central territory to southern territory. Wire, nails, and staples are now mixed with fencing material in a more or less uniform tariff description from defined territories to Arkansas and Louisiana points as well as to Texas, Oklahoma, and New Mexico destinations.

No change is contemplated in those mixtures. Respondents' endeavor to eliminate wire, nails, and staples from the iron and steel mixture appears to be prompted in large measure by requests of certain interested manufacturers, shippers, and dealers who desire a tariff adjustment that will force the movement of certain articles through the hands of Texas jobbers.

Witness for the Dallas Chamber of Commerce testified that the maintenance of a large list of iron and steel articles which includes wire, nails, and staples would eventually impoverish the trade of Texas jobbers, through whom many of the retailers make their purchases, a practice of long standing in Texas. Also it is urged that the smaller retail dealers will be adversely affected by the broad mixture in competition with local lumber yards which deal also in iron and steel articles and buy in mixed carloads. It is further testified that certain dealers are now having difficulty in selling to their trade, as some of their former customers are beginning to purchase direct from manufacturers in the East or locally from lumber yards. It is submitted on behalf of respondents that primary consideration should be given to the interests of jobbers and the smaller retailers of Texas, and that any rate situation that is adverse to them will destroy one of the principal business enterprises in the Southwest. The jobbers express disapproval of any mixture that will enable mixed carloads of iron and steel articles to be shipped to final destination for construction work without the intermediate handling by jobbers.

Wholesalers and jobbers located at Houston, Tex., insist that Texas should have a few large distributing points in order to build up the State, rather than permit consumers to rely upon New Orleans, La., St. Louis, and eastern manufacturers for their supply, ignoring the wholesalers and jobbers of Texas. A number of retail dealers raised no objection to the proposed schedules, as they purchase all of the commodities under consideration in less than carloads.

Certain eastern steel manufacturers urge that the present mixture of iron and steel articles is illogical, as it includes billets, steel rails, and wire castings, as well as wire, nails, and staples, and that the manufacturers generally are opposed to a broad mixture, as they would have to increase the size and scope of their plants to embrace the manufacture of all of these articles. Much of the testimony relates to the removal from the list of iron and steel articles of various articles that do not constitute the issue in these proceedings, such as billets, structural material, and other unrelated commodities. On the other hand, certain manufacturers apparently are either producing many of the articles in the present mixtures or are

securing them from others for shipment in mixed carloads to Texas points.

Protestants insist that the present schedules are in effect a simplified form of publication whereby several different classes of dealers are able through this liberal mixture of iron and steel articles to avail themselves of commodity rates on their shipments, and, at the same time, avoid unnatural mixtures in any car. Although wire, nails, and staples may not be used in connection with bar iron, for example, and some of the other articles allowed in the mixtures, yet dealers in the one article are frequently dealers in the others, and consequently have abundant use for the mixtures. A witness representing over 1,000 shippers or receivers of iron and steel articles testified that under the proposed schedules many of the retail dealers in wire, nails, and staples would be required to pay the less-than-carload rates from jobbing points, thus increasing the charges on their shipments. Protestants emphasize the importance of through carloads of these mixtures from points of manufacture to points of consumption, not only as a commercial requirement but as an economic saving to the carriers in avoiding unnecessary handling at jobbing points.

It is testified on behalf of the interests of Port Arthur, Tex., that the cancellation proposed would substantially increase the rates on the mixtures of iron and steel articles shipped to that city to the disadvantage of jobbers at that point. The increase would preclude merchants from purchasing except from jobbers at the Mississippi River points, and the investments of the smaller jobbers or dealers who now purchase in mixed carloads would be materially increased, thus reducing their profits. One witness objected to the proposed schedules, as wire, nails, and staples still remain in the list of iron and steel articles that may be shipped from interior Texas points to destinations in that State. Application, however, was made by respondents to the Railroad Commission of Texas for permission to eliminate wire, nails, and staples from the intrastate mixture, hearing was had thereon, and the issue is now before the State body for determination.

Protestants further stress the point that respondents have made no attempt to justify the elimination of wire, nails, and staples from the list of iron and steel articles from the standpoint of their revenues under the rates in issue. They also direct attention to respondents' unfamiliarity with the mixtures that are now being moved to Texas points under the suspended schedules, indicating that the peculiar transportation characteristics of wire, nails, and staples could not have been the motive for the changes proposed.

The facts upon which respondents principally rely to justify the proposed schedules may or may not lead to uniformity of tariff provisions in the Southwest, but irrespective of this representation increased rates can not be justified solely upon such a showing. Mixtures to meet the demands of trade may to a great extent actuate the carriers in initiating tariffs, but in these proceedings it is shown that the proposed schedules would be injurious to a large number of shippers and dealers without the necessary justification for the increased rates and charges that would result on shipments of the mixtures now provided in the tariffs. Numerous shippers or dealers, whose interests are not to be considered subordinate to others, can and do avail themselves of the mixtures now in effect and the desire of certain dealers to bring about purchases from them is no warrant for increasing the transportation burden to be borne by the consumer.

We find that respondents have not justified the suspended schedules. An order will be entered requiring their cancellation and discontinuing the proceedings.

93 I. C. C.

No. 14299

WORTH STEEL COMPANY v. DIRECTOR GENERAL, AS
AGENT

Decided October 17, 1924

Rates on steel plates, in carloads, from Claymont, Del., to Lancaster, Steelton, York, Warren, and Oil City, Pa., found unreasonable. Reparation awarded. Original report, 87 I. C. C. 29, reversed.

Joseph J. Brown for complainant.

John F. Finerty and *Royal McKenna* for defendant.

REPORT OF THE COMMISSION ON RECONSIDERATION

DIVISION 3, COMMISSIONERS HALL, CAMPBELL, AND COX

BY DIVISION 3:

In the original report herein, 87 I. C. C. 29, we found that the applicable fifth-class rates charged on 25 carloads of steel plates shipped between November 2, 1918, and March 1, 1919, inclusive, from Claymont., Del to Lancaster, Steelton, York, Warren, and Oil City, Pa., were not unreasonable or otherwise unlawful. The record before us was meager, no showing having been made by complainant as to the volume of tonnage, car loadings, earnings, or value. The complaint was dismissed.

Upon complainant's petition we reopened the case for reconsideration.

Claymont is a local station on the main line of the Pennsylvania Railroad between Chester, Pa., and Wilmington, Del. Complainant now asserts for the first time that the rates from Chester and Wilmington were published subject to rule 77 of our Tariff Circular 18-A, which provides that upon application therefor rates would be established on one day's notice from intermediate points not exceeding those from more distant points. Application for the publication of commodity rates from Claymont, the same as applied from Chester and Wilmington, was made by complainant prior to November, 1918, but the rates did not become effective until April, 1919, subsequent to the movement of these shipments. An examination of the tariffs discloses that the rates from Chester and Wilmington were published as stated. Complainant was, therefore, entitled to transportation of its shipments upon the basis of the lower commodity rates contemporaneously in effect from Chester, a more dis-

tant point. In *Pittsburgh Crucible Steel Co. v. Director General*, 81 I. C. C. 659, we said with respect to rates published under authority of rule 77:

When rates are so established shippers at the intermediate point have a lawful right to a rate no higher than that from the next more distant point. By the very language of the rule the carriers hold themselves out to grant the same rate at the intermediate point as is in effect from or to the more distant point. * * * The relief afforded thereby is in reality only relief from our tariff provisions, under section 6 of the act, which requires the printing and keeping open to public inspection of schedules showing rates between all points, etc. * * * In view of the purposes of the rule, it must follow that rates voluntarily established thereunder from the more distant points are *prima facie* reasonable, and if reasonable from or to the more distant points they must be deemed reasonable from or to the intermediate points. * * * In such cases, as in the instant case, the shipper has "paid cash out of pocket that should not have been required of him and there is no question as to the amount of the proximate loss." *Southern Pacific Co. v. Darnell-Taenzer Co.*, 245 U. S. 531, 533.

We find that the rates charged were unreasonable to the extent that they exceeded the commodity rates contemporaneously applicable from Chester to the destinations named; that complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged thereby in the amount of the difference between the charges paid and those which would have accrued at the rates herein found reasonable; and that it is entitled to reparation, with interest. Complainant should comply with Rule V of the Rules of Practice. Our original report is reversed.

93 I. C. C.

No. 15478

SOMERVILLE IRON WORKS v. CENTRAL RAILROAD
COMPANY OF NEW JERSEY

Submitted June 13, 1924. Decided October 17, 1924

Rules and regulations restricting delivery of cast-iron soil pipe, in carloads, at Piers 10, 11, 39, 46, and 81, North River, Manhattan Island, New York, found unreasonable.

Ernie Adamson for complainant.

Howard B. Thomas for defendant.

REPORT OF THE COMMISSION

DIVISION 3, COMMISSIONERS HALL, CAMPBELL, AND COX

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant, a corporation, manufactures cast-iron soil pipe at Somerville, N. J. By complaint filed December 8, 1923, it alleges that the rules, regulations, and practices maintained by defendant at Piers 10, 11, 39, 46, and 81, North River, Manhattan Island, N. Y., in connection with shipments of cast-iron soil pipe, any quantity, from Somerville, N. J., to New York, N. Y., are unreasonable, unjustly discriminatory, and unduly prejudicial in that they restrict the handling of shipments of cast-iron soil pipe and do not restrict the handling of substantially similar commodities. We are asked to prescribe reasonable and nonprejudicial rules, regulations, and practices for the future, and to award reparation. At the hearing the prayer for reparation was withdrawn.

Somerville is a local point on defendant's lines. The cast-iron soil pipe, which complainant manufactures and ships to New York, is listed in the trade as a plumbers' supply and is essential in all building operations. It is shipped in sections 2 to 12 inches in diameter, 5 feet 3 inches long, and averaging in weight 50 to 65 pounds. Fittings which are shipped with the pipe average 15 pounds each in weight. Small fittings are tied together in bundles. The center of the plumbing-supply industry on Manhattan Island is in close proximity to Piers 10, 11, 39, and 46. The commodity is shipped in box cars and is loaded in excess of the applicable minimum weight of 36,000 pounds.

Prior to August 26, 1923, defendant transported carload shipments of soil pipe tendered it by complainant at Somerville to Jersey City by rail, thence by float to its pier stations on North River, at a rate of 11.5 cents per 100 pounds. Effective on that date defendant published restrictions on the delivery of iron pipe, any quantity, at all of its pier stations on the North River, except Bronx terminal, and thereafter refused to transport complainant's shipments beyond Jersey City. The rate from Somerville to Jersey City is 8 cents per 100 pounds. From May 16, 1913, until February 25, 1921, the delivery of all iron pipe was restricted at defendant's North River piers, but that restriction was lifted, effective February 26, 1921, on iron pipe 5 feet 3 inches long and was not again made effective until August 26, 1923.

Prior to the placing of the restriction complainant shipped approximately 60 cars per year to New York. It was testified that the restriction had resulted in loss of business in lower Manhattan to complainant, who has been advised by several of its customers that, unless delivery can be made at defendant's pier stations, they will no longer be able to purchase soil pipe from complainant.

All railroads, except defendant, handle cast-iron soil pipe at their pier stations on North River. Some of them have restrictions against pipe of certain lengths, but there are no restrictions against pipe of the size and length shipped by complainant. The Pennsylvania, Baltimore & Ohio, New York Central, Lehigh Valley, West Shore, Erie, and Delaware, Lackawanna & Western handle at their piers in lower Manhattan the kind of soil pipe shipped by complainant. Such commodities as steel bars, rods, ingots, pigs, billets, castings, steel tube, tanks, machinery, plumbers' supplies and fittings, including bathtubs, and other bulky commodities not unlike iron pipe are handled at defendant's North River piers.

It was testified that merchandise freight, generally shipped in less-than-carload quantities and requiring prompt handling, constitutes the largest portion of freight at defendant's piers. The congestion existing at all pier stations in New York was referred to, and it was urged that the restriction on pipe would relieve that congestion to some extent. Complainant's traffic amounts to about 60 cars per year, as compared with approximately 30,000 cars per year handled over defendant's pier stations in each direction.

Figures were submitted showing that the amount of time and the number of men required to unload a car of soil pipe on four different dates were as follows: Ten men, three and one-half hours; seven men, four hours; seven men, three and one-half hours; four men, six hours. The average cost of unloading the four cars was said to have been 60 cents per ton for labor alone. The average time required to

unload cars containing other commodities was said to be between 25 and 30 minutes, and the labor costs ranged from 12 to 40 cents per ton. A witness for complainant testified that three men had unloaded a car of soil pipe direct from the car to a truck in three to three and one-half hours. That car was on a sidetrack and not on a car float. It was agreed that the chief difficulty in handling soil pipe is the necessity of carrying each piece of pipe separately.

Defendant's witnesses testified that the reasons for the restrictions on iron pipe at its New York pier stations were that the handling of that commodity interferes with the float service and that iron pipe is more expensive to handle than the usual run of commodities. Eastbound freight is sent on car floats from Jersey City to the piers early in the morning. At the piers it is unloaded by defendant's employees and westbound freight is loaded into the cars on the float. It is necessary to unload promptly so that the floats can leave the piers in time to allow the cars to be placed in westbound trains at Jersey City. It frequently happened that the car containing soil pipe was not unloaded prior to the scheduled leaving time of the float from the piers loaded with westbound traffic, and, therefore, it was sometimes necessary to transport the pipe between Jersey City and the piers several times before it was unloaded. It was admitted, however, that the delay was caused by the carrier itself and was due to the fact that generally the car containing soil pipe was among the last of the cars to be unloaded. The floats remain at the piers eight or nine hours.

Defendant introduced an exhibit to show that consignees of soil pipe from Somerville can obtain that commodity more cheaply by taking delivery at Jersey City and trucking thence to New York. The trucking charges shown in that exhibit were challenged by complainant, but regardless of whether they are correct or not, there is no doubt that consignees of the soil pipe would be placed to great inconvenience by being required to truck the pipe from Jersey City. Defendant showed that there are public piers in lower Manhattan which have no restrictions against soil pipe and that it could be lightered to those piers from Jersey City. Complainant's witness testified that the public piers are not located near the plumbing supply district. It was asserted that the trucks of the dealers make deliveries on the west side of Manhattan Island and are in the vicinity of defendant's North River piers, at which supplies are received. If they are required to take delivery at the public piers it would necessitate the trucking of the material across town, which would result in considerable loss of time.

Since the hearing and effective May 10, 1924, the defendant has published a tariff which removes the restriction on less-than-carload

shipments of cast-iron soil pipe at its North River piers, and publishes restrictions at its New York piers on carload shipments of iron and steel articles, single pieces exceeding 1,000 pounds in weight, and pieces exceeding 20 feet in length.

The congestion existing at piers on Manhattan Island has been referred to by us in various cases, and reasonable rules and regulations designed to relieve that congestion and to facilitate the handling of the increasing tonnage of merchandise freight at the piers will not be condemned. Iron pipe, due chiefly to the amount of time required to unload it, may be undesirable traffic at pier stations, but defendant does not similarly restrict other traffic which is bulky and difficult to handle, such as some iron and steel articles, structural iron and steel, bathtubs, etc. There is nothing of record to indicate that these articles should be accorded more favorable rules respecting delivery than cast-iron soil pipe.

We find that the rules and regulations maintained by defendant at its Piers 10, 11, 39, 46, and 81, North River, Manhattan Island, N. Y., restricting the delivery of cast-iron soil pipe, in carloads, result in an unreasonable practice within the meaning of section 1 of the interstate commerce act, from which defendant will be required to cease and desist.

An appropriate order will be entered.

93 I. C. C.

No. 14708

STATE CORPORATION COMMISSION OF NEW MEXICO
v. ATCHISON, TOPEKA & SANTA FE RAILWAY COM-
 PANY ET AL.

Submitted June 25, 1924. Decided October 23, 1924

Minimum weights on alfalfa hay, applicable from points in the Pecos and Mesilla Valleys in New Mexico to points in Texas found unreasonable and unduly prejudicial to shippers in New Mexico as compared with minima applicable on the same commodity between points in Texas and to result in unjust discrimination against interstate commerce. Reasonable minima from New Mexico to Texas points found. Record held open for further action if any becomes necessary.

Hugh H. Williams, J. M. Luna, Bonifacio Montoya, John W. Armstrong, and Edwin F. Coard for complainant.

W. C. Reid, R. C. Reid, F. E. Andrews, T. B. Gallaher, B. F. Seggerson, and W. R. Brown for defendants.

O. D. Hudnall for Railroad Commission of Texas.

Charles A. Bland for El Paso Chamber of Commerce, West Texas Chamber of Commerce, Panhandle-Plains Chamber of Commerce, Fort Stockton Alfalfa Association, Texas-New Mexico Alfalfa Exchange, and Fort Stockton Warehouse Corporation; *J. A. Fields* for Texas-New Mexico Alfalfa Growers Exchange, Elephant Butte Alfalfa Association, Toyah Valley Alfalfa Association, and Fort Stockton Alfalfa Association; and *F. A. Leffingwell*, for Texas Chamber of Commerce, and Texas Industrial Traffic League, interveners.

REPORT OF THE COMMISSION

DIVISION 2, COMMISSIONERS ATCHISON, ESCH, AND CAMPBELL
 ATCHISON, *Commissioner*:

Exceptions were filed by the Texas Industrial Traffic League to the proposed report of the examiner. Our conclusions differ somewhat from those proposed by him.

Complainant alleges that the carload minimum weights applicable on alfalfa hay from points of origin in New Mexico to destinations in Texas are unreasonable, unduly prejudicial to producers and shippers of alfalfa hay in New Mexico, and unjustly discrimi-

natory against interstate commerce by comparison with lower minimum weights applicable on carload shipments of the same commodity from competing Texas shipping points to the same consuming territory in that State, which unduly prefer such Texas competitors, in violation of sections 1, 3, and 13 of the act. We are asked to prescribe reasonable carload minima on alfalfa hay from New Mexico producing points to Texas consuming points and to require the removal of the undue prejudice to New Mexico shippers and the unjust discrimination against interstate commerce. The State of Texas was given due notice of the proceeding, and the Railroad Commission of Texas was represented at the hearing but submitted no evidence. The El Paso Chamber of Commerce, the Texas Chamber of Commerce, and a number of Texas hay-shipping and hay-growing organizations intervened in support of the reasonableness of the Texas minima.

Subsequent to the date of submission we conferred with the interested State commissions as authorized by section 13, paragraph (3), of the act. They have advised us of their agreement as to the minimum weights that should apply, from New Mexico points to Texas points, as well as intrastate in Texas. Their joint recommendation will be set forth later in this report and will be considered in the light of all the facts of record.

In 1919, New Mexico produced 278,595 tons of alfalfa from 116,926 acres. In that year Texas produced 137,043 tons from 58,266 acres. The principal alfalfa-producing sections of New Mexico are in the Rio Grande and Pecos Valleys. The portions of the Rio Grande Valley respectively north and south of El Paso, Tex., are called the Mesilla and El Paso Valleys. Alfalfa is the basic crop in the Pecos Valley. In 1922, Chaves and Eddy, the principal alfalfa counties in that valley, produced about 87,000 tons of hay. Alfalfa is produced extensively in the Rio Grande Valley, although farming is more diversified there. In New Mexico the chief production is between the Texas-New Mexico State line and Rincon, N. Mex., in the Mesilla Valley, and between Corral and Elida, N. Mex., in the Pecos Valley. In 1922 Dona Ana County, in which the Mesilla Valley of New Mexico is located, produced about 45,600 tons of hay. In Chaves, Eddy, and Dona Ana Counties, alfalfa constitutes from 85 to 90 per cent of the hay produced. In Texas, in addition to the Rio Grande Valley, alfalfa is produced principally in the Toyah and Fort Stockton Valleys south of Pecos, Tex., in the Panhandle section and in northeast Texas near the Oklahoma State line.

The principal market for New Mexico alfalfa, as well as that produced in west Texas, is in east Texas and Louisiana. The soil

and climate of these producing sections are about the same, hay crops mature about the same time, and the product of each district is sold in competition with that of the other in the common market. The Atchison, Topeka and Santa Fe Railway, hereinafter named the Santa Fe, originates most of the New Mexico alfalfa which moves to Texas points. During 1922 that carrier moved 5,854 cars of hay, straw, and alfalfa within New Mexico, of which approximately 90 per cent was alfalfa.

The minima assailed are compared below with the Texas intra-state minima:

Inside length, car measurement	From points in Pecos Valley to points in Texas	From points in Mesilla Valley to points in Texas	Texas (intra-state)
	<i>Pounds</i>	<i>Pounds</i>	<i>Pounds</i>
32 feet and under.....	17,500	20,000	14,000
34 feet and over 32.....	17,500	20,000	15,000
Over 34 feet and under 36 feet.....	20,000	20,000	16,000
36 feet.....	22,000	22,000	16,000
36 feet 6 inches.....	22,000	22,000	17,000
Over 36 feet 6 inches to and including 42 feet.....	24,000	24,000	17,000
Over 42 feet.....	30,000	30,000	17,000

Lower minima of 17,000 pounds for cars 34 feet and less in length, and 20,000 pounds for cars over 34 feet, are provided in connection with proportional rates on hay, in carloads, including alfalfa, from stations Berino to Rincon, N. Mex., inclusive, to La Tuna, Tex., applicable only on shipments destined beyond El Paso, Tex., when moving by way of that point. Apparently these minima were established by the Santa Fe to enable New Mexico alfalfa producers in the Mesilla Valley to compete more nearly on an equality with near-by Texas alfalfa producers. The record discloses in addition that the El Paso & Southwestern maintains different minima from New Mexico points to El Paso, in connection with its commodity and distance commodity rates on hay. These minima are not assailed by the complaint, and the record is silent as to whether there is a movement of alfalfa hay from originating points in New Mexico to Texas thereunder.

Complainant urges that alfalfa shippers should not be penalized by the imposition of freight charges on basis of minima which can not readily be loaded. The evidence shows that difficulty is experienced in loading the smaller cars, particularly those with low ceilings, to the published minima; that some shippers do not attempt to load 32-foot and 34-foot cars; that many 32-foot and 34-foot, and some 36-foot, cars are refused by shippers after being placed for

loading; and that frequently such cars are unloaded because of the impossibility of getting the prescribed minimum into them. The testimony is generally to the effect that the prescribed minimum can ordinarily be loaded in the larger cars, those of lengths 36 feet 6 inches and over.

While defendants do not admit that the prescribed minima can not be loaded in the smaller cars, their exhibits, as well as those of complainants, show that in the past a considerable number of alfalfa shipments from New Mexico to Texas have been loaded under the prescribed minimum weights. Defendants contend that this has been due principally to loose, light baling, caused by a demand from Texas hay dealers for such bales, influenced by the fact that they buy by the ton and sell by the bale. They argue that alfalfa hay may, without damage, be baled sufficiently heavy to load the prescribed minimum weights. Complainant admits that the Texas hay dealers, who purchase the New Mexico alfalfa, require light bales, averaging 35 bales to the ton or about 57 pounds each. The alfalfa of their Texas competitors is baled in this manner, and irrespective of other considerations, they must do likewise or sell their hay below the standard market price. But they advance other reasons for light baling. While the standard hay press is 14 by 18 by 30 inches, there is a notable lack of uniformity in the size and degree of smoothness of bales. Alfalfa must be baled at a certain tension in order to command the market price for choice hay. If baled too tightly, it is subject to damage by moulding or heating. These considerations likewise influence hay shippers in their methods of baling.

The great majority of cars loaded with alfalfa hay from the points of origin considered are 36 feet or 36 feet 6 inches in length. Of 159 cars shipped in May and October, 1922, from stations south of Clovis, N. Mex., to and including Corral, 108 were of these lengths. Of this number 34 were loaded under the prescribed minimum of 22,000 pounds. Forty-six others moved in cars over 36 feet 6 inches in length and loaded above the minimum in all instances but 11. Complainant contends that May and October are not representative of the entire year, because during those months shipments are of newly mown alfalfa loaded directly from the fields, which is heavier than the stored product shipped during the winter months. The shrinkage in stored under newly mown alfalfa is about 8 per cent.

Complainant urges that in order to provide reasonable minima on low-roofed cars a tariff rule should be required providing that actual weight shall govern when cars are loaded to full visible capacity. It would doubtless be difficult to police such a rule, and defendants argue that it would lead to light loading with consequent depletion of their revenues.

The Texas Industrial Traffic League contends that there is no basis of record for a finding of undue prejudice of the New Mexico points to the undue preference of the Texas points, because there is no showing as to the relative rate levels in effect from the respective producing districts. We have the same authority and duty with respect to the removal of unjust discrimination brought about by different carload minima as we have in the case of unjust discrimination against interstate traffic caused by State rates. *Kansas City Millers' Club v. A., T. & S. F. Ry. Co.*, 50 I. C. C. 170, 182.

In support of the reasonableness of the New Mexico minima, defendants rely upon *Hay Minimum Weights*, 39 I. C. C. 167, in which certain minima were prescribed from points in the Pecos Valley of New Mexico to various destinations in Texas and Louisiana. The testimony in that case is a part of this record. Numerous minima applicable in adjoining States were submitted in evidence. As indicating the impracticability of loading alfalfa to the New Mexico minima, the Texas interveners submitted certain car loadings of shipments moving intrastate in Texas. Here also the great majority of the cars used are 36 feet or 36 feet 6 inches. Between May, 1922, and March 1, 1923, one association shipped 270 cars of hay, all but 48 of which were cars 36 feet or over in length. In every case the loading was less than 20,000 pounds. The average loading of the cars under 36 feet was about 16,270. The shipments in question were made under the low Texas minima, and there was no reason for shippers to load more heavily than required. The Texas interests, however, point out that despite the low minima in effect in that State, the net weights of 33 of the 270 cars were less than the applicable intrastate minima. Certain of the carriers serving Texas submitted statistics which showed somewhat higher loadings. On 36 cars under 36 feet in length the average loading was 17,325 pounds. In 11 instances out of the 36 the loading was less than 16,500 pounds. The average loading of 158 36-foot cars was slightly in excess of 20,000 pounds. Of the 158 cars 36 were loaded in excess of 22,000 pounds. The shipments in question moved intrastate in Texas in 1922 to Fort Bliss and El Paso. Sixty-five cars, 40 feet or longer, also moving intrastate, averaged 24,670 pounds. Little trouble is experienced either in New Mexico or Texas in loading cars over 42 feet in length up to the 30,000-pound minimum.

The minimum weights recommended by the rate-making bodies of New Mexico and Texas, including a proposed tariff note, are as follows:

93 I. C. C.

	Pounds
Cars 34 feet and less.....	15, 000
Cars over 34 and less than 36 feet.....	16, 500
Cars 36 feet to and including 36 feet 6 inches.....	20, 000
Cars over 36 feet 6 inches to and including 40 feet.....	22, 000
Cars over 40 feet to and including 42 feet 6 inches.....	24, 000
Cars over 42 feet 6 inches.....	28, 000

NOTE.—When cars less than 8 feet in height and 8 feet 7 inches in width, inside measurement, are loaded to full capacity and contain less in weight than the minimum prescribed above for the length of car so loaded, actual weight shall be observed as the minimum.

The statistics of actual loadings of both the interstate and intrastate shipments have been shown. For reasons which are apparent from a comparison of these loadings with the minima sponsored by the two State commissions, we can not adopt their recommendation in toto. Nor do we deem it advisable to require the publication of a note such as is requested by complainant. The minima herein prescribed, however, should enable both the New Mexico and Texas shippers to reach common markets on an equality and will do substantial justice to all concerned.

We find that for the future the minimum weights per car on alfalfa hay from points in New Mexico located on the Santa Fe, between the Texas-New Mexico State line and Rincon, N. Mex., and between Corral and Elida, N. Mex., to points in Texas on lines of defendants will be unreasonable to the extent that they exceed the following minimum weights per car, which minimum weights we find will be just and reasonable maximum minimum weights per car:

Inside car measurement (length)	Pounds
Under 36 feet.....	16, 500
36 feet to 36 feet 6 inches, inclusive.....	20, 000
Over 36 feet 6 inches to 40 feet.....	22, 000
40 feet to and including 42 feet.....	24, 000
Over 42 feet.....	30, 000

The present minima, applicable intrastate in Texas, are lower than the reasonable minima prescribed for application on interstate traffic from New Mexico points to Texas destinations and such disparities are not justified by differences in circumstances and conditions pertaining to the two classes of traffic.

We further find that the maintenance by defendants of lower minimum weights per car in connection with the transportation of alfalfa hay between points in Texas than from points in New Mexico located on the Santa Fe, between the Texas-New Mexico State line and Rincon, N. Mex., and between Corral and Elida, N. Mex., to points in Texas result in undue prejudice to New Mexico shippers of alfalfa hay, to the undue preference and advantage of Texas shippers of the same commodity, and in unjust discrimination against interstate

commerce. This undue prejudice and preference and unjust discrimination should be removed by the publication of the same minima intrastate in Texas as are prescribed for interstate application between the New Mexico points named and destinations in Texas.

We will enter no order for the present but the carload minima involved should be adjusted in the light of the foregoing findings. The record will be held open for further action if any becomes necessary.

No. 14285¹PACIFIC ADJUSTMENT COMPANY *v.* DIRECTOR GENERAL, AS AGENT

Submitted May 29, 1924. Decided October 17, 1924

Complaint, in which reparation is sought as for straight overcharges based upon alleged violations of the fourth section of the act dismissed.

Sanborn & Roehl and De Lancey C. Smith for complainant.

John F. Finerty, Elmer Westlake, and Alex M. Bull for defendant.

REPORT OF THE COMMISSION

DIVISION 3, COMMISSIONERS HALL, CAMPBELL, AND COX

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

These three complaints covering shipments made during Federal control, were filed August 29, 1922, and under the statute, therefore, are limited to overcharges above the legal tariff charge. They are based upon the theory that any departure from the requirements of the fourth section of the act to regulate commerce is unlawful, that the published tariff charge reflecting such a departure does not show the legal tariff charge, that the latter is to be found in the lower rate to a more distant point or in the lower aggregate of intermediate rates, and that the collection of the published tariff charge which exceeds lower rates so found is a straight overcharge. There is no allegation of a violation of section 6 of the act. All the complaints confine their averments to recitals of alleged tariff inconsistencies which are set forth as showing departures from the requirements of the fourth section. Thus related, these cases were heard together and will be disposed of in this report.

The only complainant named is the Pacific Adjustment Company, a corporation having its principal place of business in San Francisco, Calif. The shipments set forth in these complaints were not made or received by complainant but complainant brings these complaints under authority of certain assignments. The only defendant named is the Director General of Railroads, as agent, and therefore the period to be considered is that of Federal control. Rates over rails

¹ This report also embraces No. 14286, *Same v. Same*; and No. 14287, *Same v. Same*.

not controlled or operated by the director general at the time are not in issue.

The complaint in No. 14285 relates to alleged overcharges collected by defendant on shipments of vegetables and melons from California points to Tacoma and Seattle, Wash., and is based on the fact that the rates collected were in excess of the aggregate of intermediate rates contemporaneously in effect.

The complaint in No. 14286 sets forth overcharges alleged to have resulted from the collection of rates on a number of different commodities shipped from certain California points to Oregon points which were greater than the rates concurrently in effect and maintained by defendant for the transportation of like traffic over the same route in the same direction for longer hauls, the shorter haul being included within the longer.

The complaint in No. 14287 sets forth alleged overcharges resulting from the collection of rates on vegetables and melons moving from California points to points in Oregon south of and including East Portland, also in violation of the long-and-short-haul clause of the fourth section.

A summary of the matters presented in these three complaints is as follows: In each case all shipments and rates discussed are car-load; in each case complaint is made that the rates collected were unlawful and in violation of section 4 of the act to regulate commerce; and in each case complainant seeks reparation based on the difference between the rate collected and the lawful rate.

In Dockets Nos. 14286 and 14287, complainant alleges that the charges collected by defendant on the shipments covered by complaints were overcharges to the extent that they exceeded rates charged by defendant for the transportation of like kind of property for a longer distance over the same line or route, and unlawful and in violation of section 4 of the act to regulate commerce.

A similar contention was decided adversely by the Supreme Court of the United States, April 7, 1924, in *Davis v. Portland Seed Co.* 264 U. S. 403. It follows that the complaints in Dockets No. 14286 and No. 14287 must be dismissed.

In the case cited the Supreme Court did not have before it an allegation of a violation of that clause of the fourth section which prohibits the charging of "any greater compensation as a through rate than the aggregate of the intermediate rates subject to the provisions of this act." But its reasoning is conclusive, nevertheless, as applied to this clause as well as to the long-and-short haul clause which was before it. For among the things decided in the case cited are these: (a) The published tariff rates must be charged and paid regardless of whether they are otherwise lawful or not; and (b) an

unlawful rate may subject the carrier to the payment of penalties to the Government, but its charging by the carrier does not give the shipper any right save to recover "the full amount of damage sustained in consequence of any such violation of the provisions of this act."

We have consistently found that a joint rate that exceeds the aggregate of intermediate rates over the same line or route is prima facie unreasonable. We have never found that the charging of such a rate is an overcharge. Moreover, we have always maintained that "the statute requires rigid observance of the tariff, without regard to the inherent lawfulness of the rates specified." Paraphrasing the words of the court in the case cited: Observance of the higher rate complained of in No. 14285, even if put in without authorization, might have been forbidden, as pointed out in *United States v. Louis. & Nash. R. R.*, 235 U. S. 314; but it would be going too far to find, as complainant insists, that the unauthorized publication established the lower aggregate of intermediate rates as the maximum permissible charge, and the only rate which could be demanded.

The complainant made no proof of damages to it or to its various assignors; and, in view of what is said above, there is no necessity to examine the other matters that otherwise might be of importance in determining the rights of complainant under No. 14285.

These complaints will be dismissed.

93 I. C. C.

No. 14710

CONSOLIDATED COAL COMPANY OF ST. LOUIS v. DIRECTOR GENERAL, AS AGENT, AND CHICAGO, WEST PULLMAN & SOUTHERN RAILROAD COMPANY.

Submitted May 7, 1924. Decided October 17, 1924

Rates on coal, in carloads, from Mount Olive and Staunton, Ill., to West Pullman, Ill., in 1919, found not unreasonable or otherwise unlawful. Complaint dismissed.

W. A. Holley for complainant.

John C. Brooke, E. C. Blanchard, and John R. Finerty for Director General of Railroads, as agent.

REPORT OF THE COMMISSION

DIVISION 3, COMMISSIONERS HALL, CAMPBELL, AND COX

BY DIVISION 3:

Exceptions were filed by the Director General of Railroads, as agent, hereinafter called defendant, to the report proposed by the examiner. Our conclusions differ from those recommended by him.

Complainant, a corporation, mines coal at various points in Illinois. By complaint seasonably filed it alleges that the rates charged for the transportation of 89 carloads of bituminous coal shipped from Mount Olive and Staunton, Ill., to West Pullman, Ill., between August 25 and October 20, 1919, were unreasonable, unjustly discriminatory, and unduly prejudicial. Reparation is sought. Rates will be stated in amounts per net ton.

The shipments moved over the Wabash to Chicago, Ill., and the Belt Railway of Chicago, and the Chicago, West Pullman & Southern beyond. Charges were collected at the applicable rates of \$1.31 plus \$2.50 per car plus 10 cents per net ton or fraction thereof on excess weight over 80,000 pounds. It appears that seven shipments were overcharged and defendant has indicated his willingness to make prompt refund of the overcharges.

Defendant raises the objection that the Belt Railway of Chicago is not mentioned in the complaint as required by section 206(c) of the transportation act and our rules of practice. The rate attacked is a joint rate and, even if Federal control had not intervened, it would not have been necessary to name all the carriers participating in the transportation as parties defendant, *Webster Grocer Co.*

v. *C. & N. W. Ry. Co.*, 21 I. C. C. 20. The defendant also contends that since the Chicago, West Pullman & Southern was not under Federal control our jurisdiction does not extend to the portion of the transportation over that line. This objection has no force since under the joint rate the liability is joint and several.

No evidence was introduced with respect to the allegations of undue prejudice and unjust discrimination and those issues will not be further considered.

Coal mines in Illinois are divided into groups for rate-making purposes. Mount Olive and Staunton are located in the Springfield group. These groups and their differential relation one to the other are fully described in *Illinois Coal Cases, 1920*, 62 I. C. C. 741. West Pullman is within the Chicago switching district. From November, 1917, to July 1, 1919, the flat Chicago rate plus 10 cents per net ton or fraction thereof on excess weight over 80,000 pounds applied from mines in the Springfield group to West Pullman. Effective July 2, 1919, the rates over the Wabash were increased \$2.50 per car pursuant to freight-rate authority No. 6393 of the railroad administration. Effective February 29, 1920, under freight-rate authority No. 21377, the increase of \$2.50 per car was removed.

It is this increase of \$2.50 per car which complainant contends resulted in an unreasonable rate and its sole basis for that contention is that the charge was added through error or inadvertence. It admits that the rates from Illinois mines to Chicago are low, and that the unreasonableness of the assailed rate can not be demonstrated by comparison with rates to other destinations. The claim of unreasonableness is based upon the fact that rates to Chicago from other mines and over other railroads were not subjected to the increase of \$2.50 per car and that the assailed rates are unreasonable by comparison with those rates. The aggregate rate paid by complainant, including the \$2.50 charge per car of 40 tons was \$1.3725. At the distances from Mount Olive and Staunton, 242 and 248 miles, that rate earned 5.7 and 5.6 mills per ton-mile, respectively. A rate admittedly low does not become unreasonable merely because other low rates to the same destination are not increased at the same time. Nor is an increase applied through error sufficient in itself to show that the resulting rate is unreasonable.

Defendant compares the rates assailed with contemporaneous rates on coal from mines in Ohio, Indiana, and Illinois to points in those States ranging from \$1.50 to \$2.40 for distances of 125 to 258 miles, and yielding considerably higher revenue per ton-mile. He

also shows that the rates assailed are lower for comparable distances than rates approved by us in other cases.

We find that the rates assailed were not unreasonable or otherwise unlawful. The complaint will be dismissed.

No. 15128

JACKSON TRAFFIC BUREAU ET AL. *v.* ALABAMA &
VICKSBURG RAILWAY COMPANY ET AL.

Submitted September 15, 1924. Decided October 25, 1924

Rate on furniture, in carloads, from Fort Smith, Ark., to Jackson, Miss., found to have been unreasonable and in violation of the aggregate-of-intermediates-rates clause of the fourth section. Reparation awarded.

T. P. Goodwin for complainants.

E. A. Smith and *H. H. Larimore* for defendants.

REPORT OF THE COMMISSION

DIVISION 4, COMMISSIONERS MEYER, EASTMAN, AND POTTER

BY DIVISION 4:

This case was presented under the shortened procedure. No exceptions were filed to the report proposed by the examiner.

Complainants are Jackson Traffic Bureau, a voluntary association of shippers of Jackson, Miss., and Rice Furniture Company, a corporation engaged in the furniture business at that point. By complaint filed July 28, 1923, it is alleged that the rate charged by defendants on a carload of common furniture shipped March 3, 1922, from Fort Smith, Ark., to Jackson was unreasonable and, as compared with the rates to Memphis, Tenn., Vicksburg, Miss., and New Orleans, La., unjustly discriminatory and unduly prejudicial and in violation of the long-and-short-haul provision of the fourth section. The prayer is for a reasonable and nonprejudicial rate for the future, and reparation. Rates will be stated in cents per 100 pounds.

The shipment weighed 16,000 pounds and moved Missouri Pacific to Memphis and the Illinois Central beyond, 514 miles. Charges in the sum of \$241.60 were collected at the joint third-class rate of \$1.51, governed by the western classification. When the shipment moved defendants maintained a rate of 54 cents on furniture, in carloads, from Fort Smith to Vicksburg, 516 miles, by way of Memphis, and

394 miles over the Missouri Pacific to Tallulah, La., and the Vicksburg, Shreveport & Pacific beyond. The distance to Jackson over the latter route in connection with the Alabama & Vicksburg is 438 miles. The 54-cent rate also applied to New Orleans, about 690 miles, through Memphis. Complainant contends that the rate charged was unreasonable to the extent that it exceeded the rate to Vicksburg and New Orleans, and that the present rate is unreasonable to the extent that it exceeds the present rate of 48.5 cents to those points. The maintenance of lower rates to New Orleans than to Jackson and other intermediate points over the route through Memphis was and is protected by appropriate fourth-section applications now pending before us.

When the shipment moved the aggregate of the intermediate rates to and from Memphis was 97.5 cents, composed of 38.5 cents to Memphis, and 59 cents beyond. The combination of local rates to and from Vicksburg was 96.5 cents, made up of 54 cents, minimum 20,000 pounds, to Vicksburg, and 42.5 cents, minimum 12,000 pounds, beyond. Defendants admit that the rate charged was unreasonable to the extent that it exceeded the Vicksburg combination, and offer reparation on that basis.

In support of its contention that the rate to Jackson should not exceed the rates to Vicksburg and New Orleans, complainants instance relatively lower rates on furniture, in carloads, from Fort Smith to western trunk-line territory, Mississippi River points, and eastern trunk-line and New England points, and to Birmingham, Ala., which range from 36.5 cents to Kansas City, Mo., 361 miles, to 97.5 cents to eastern trunk-line and New England points; also to rates to Jackson of 87 cents from St. Louis and Ohio River crossings, and 77 cents from Nashville, Tenn. All of the rates shown by complainants are joint commodity rates and none of them apply to points in the Mississippi Valley except to points on the Mississippi River. The usual basis of rates from Fort Smith to points in the Mississippi Valley is combination on the Mississippi River crossings, and defendants urge that any disturbance in the usual basis from Fort Smith to Jackson on furniture will bring about complaints from other shippers who will seek to break down the normal adjustment.

Effective September 26, 1922, the Vicksburg combination was established from Fort Smith to Jackson which, reflecting the 10 per cent reduction of 1922, is 87 cents.

Complainant's traffic witness argues that 20,000 pounds of common furniture can not be loaded in a standard car, but no facts are submitted in support of this contention. While complainants' evidence contains general statements to the effect that the Rice Furni-

ture Company competes in the distribution of furniture with dealers located at New Orleans, Vicksburg, and Memphis, no details are set forth that would warrant a finding of unjust discrimination or undue prejudice.

Upon this record we find that the present rate is not unreasonable, but that the rate charged was unreasonable to the extent that it exceeded the combination on Vicksburg; that the Rice Furniture Company made the shipment as described and paid and bore the charges thereon; and that it was damaged and is entitled to reparation in the sum of \$65.60, with interest.

An appropriate order will be entered.

93 I. C. C.

No. 15431

STANDARD LUMBER COMPANY *v.* DIRECTOR GENERAL,
AS AGENT, SOUTHERN RAILWAY COMPANY, ET AL.

Submitted June 26, 1924. Decided October 21, 1924

Transportation, demurrage, and penalty charges assessed on a carload of lumber shipped from Demopolis, Ala., to Louisville, Ky., and reconsigned to Bluefield, W. Va., found to have been in excess of the charges authorized by defendants' tariffs. Reparation awarded.

A. J. Ribe for complainant.

W. S. Andrews for Southern Railway system lines.

REPORT OF THE COMMISSION

DIVISION 4, COMMISSIONERS MEYER, EASTMAN, AND POTTER

BY DIVISION 4:

This case was presented under the shortened procedure. No exceptions were filed to the report proposed by the examiner.

Complainant, a corporation engaged in the lumber business at Birmingham, Ala., by complaint filed November 9, 1923, alleges that the transportation, demurrage, and penalty charges assessed on a carload of lumber shipped February 25, 1920, from Demopolis, Ala., to Louisville, Ky., and reconsigned to Bluefield, W. Va., were unreasonable, unjustly discriminatory, and illegal. The complainant contends that the shipment was misrouted at Louisville, although otherwise the complaint seems to be based wholly upon the view that the charges assessed were in excess of those authorized by defendants' tariffs. Reparation only is asked. The claim was informally filed February 26, 1921. Rates will be stated herein in cents per 100 pounds.

The shipment was originally consigned to complainant at Louisville, where it arrived, over the Southern, March 2, 1920. That carrier thereupon deposited in the mails a postcard containing notice of arrival addressed to the consignee at Louisville, but the complainant has no place of business at this point and the notice was not received. On March 8 the Southern wrote the consignor asking for disposition orders. Its letter, received by the consignor on March 11, was thereupon forwarded by that party to the complainant, who received it March 12. Sale of the lumber was not effected until March 18, and on that date complainant wired the

Southern reconsigning directions and the shipment was reconsigned to Bluefield.

The movement to Louisville was on Southern to Birmingham, Ala., Alabama Great Southern to Chattanooga, Tenn., Cincinnati, New Orleans & Texas Pacific to Danville, Ky., and thence Southern. Beyond Louisville the car was back hauled over the Southern and the Cincinnati, New Orleans & Texas Pacific to Harriman, Tenn., and from that point moved Southern to Bristol, Tenn., and Norfolk & Western, beyond. The shipment weighed 54,600 pounds, and in addition to a reconsigning charge not here challenged, aggregate transportation charges of \$289.38 were collected, based upon rates of 21.5 cents to Louisville, and 31.5 cents beyond. These rates can not be checked. A rate of 27 cents was in effect from Demopolis to Roanoke, Va. The Norfolk & Western maintained a rate of 13 cents from that point to Bluefield, and under the authority of Agent Kelly's tariff I. C. C. No. U. S. 1, the aggregate of these factors was 37.5 cents. The 27-cent factor was not specifically restricted to prevent its application to Roanoke over the route of movement through Louisville. But the movement in question involved an out-of-line haul and back haul aggregating 468 miles, and the tariff may not be construed as authorizing the application of the 37.5-cent rate to Bluefield over that route. However, the 27-cent rate applied to Roanoke over the route of movement through Louisville in connection with the Chesapeake & Ohio and Norfolk & Western beyond, and under the authority of rule 5(b) of our Tariff Circular 18-A the 37.5-cent rate was available to Bluefield over that route. The shipment was thus misrouted by the Southern in that it was not turned over to the Chesapeake & Ohio at Louisville.

The demurrage charge assessed was \$53, based on 13 days detention, exclusive of 24 hours free time and the intervening Sundays, and a rate of \$2 per day for each of the first four days and \$5 per day for the remaining days. The penalty charges aggregated \$140, based on detention of 14 days, exclusive of 48 hours free time, and a rate of \$10 per day. The provision of the demurrage tariff with respect to notice to the consignee is as follows:

Rule 4—Notification—Section A—Notice of arrival shall be sent or given consignee or party entitled to receive same by this railroad's agent in writing or, in lieu thereof, as otherwise agreed to in writing by this railroad and consignee, within twenty-four hours after arrival of car and billing at destination, such notice to contain car initials and number, point of shipment, contents and if transferred in transit, the initial and number of original car. When address of consignee does not appear on billing, and is not known, the notice of arrival must be deposited in United States mail enclosed in a stamped envelope bearing return address, same to be preserved on file if returned. An
93 I. C. C.

impression copy shall be retained, and when notice is sent or given on a postal card the impression shall be of both sides. * * *

Defendants have not established that these provisions of the tariff were complied with and the record affords no basis for a finding that the notice required by the tariffs was sent. Cases referred to by them had to do with situations where the tariff provisions were different from those above noted. The situation now presented is similar to that in *American Lumber & Export Co. v. Director General*, 78 I. C. C. 48, in which it is stated:

The present transaction falls within that class of cases where the arrival notice should have been sent in stamped envelope bearing return address, and preserved on file if returned.

Rule 4, section E, of the demurrage tariff provides that when carload freight, other than perishable freight, is unclaimed within five days of the first 7 a. m. after the day on which notice of arrival has been sent or given to the consignee, a notice to that effect, within 24 hours thereafter, shall be sent by wire to the consignor, when known, at his expense. Rule 8, section D, paragraph 4, states that in case of the failure of the carrier to send notice in accordance with the provisions of rule 4, section E, the consignor shall not be held liable for demurrage charges between the date the notice should have been sent and the date it was actually sent.

Had defendants' notice to the consignor of March 8 been a telegraphic notice as required by the tariff, it should have been received on the same day. As it was not received until March 11 it may not be regarded as a notice prior to that date. Allowing for 24 hours free time, and an intervening Sunday, the shipment was subject to five days demurrage, amounting to \$13. The provision of the tariff as to penalty charges has no application during the period demurrage does not accrue and the aggregate penalty charge was \$50.

We find that the shipment was made as described and that the charges assailed were paid by complainant; that the shipment was overcharged by the defendant carriers to the extent that the demurrage and the penalty charges exceeded \$13 and \$50, respectively; and that with respect to these charges complainant is entitled to reparation in the sum of \$130, with interest. We further find that the shipment was misrouted by the Southern Railway; and that complainant on this account was damaged and is entitled to reparation from that defendant in the sum of \$84.63, with interest.

An appropriate order will be entered.

No. 15201

LIGGETT & MYERS TOBACCO COMPANY v. DIRECTOR
GENERAL, AS AGENT

Submitted June 20, 1924. Decided October 17, 1924

Rates on plug tobacco, in carloads, and on notions, clock watches, cutlery not plated, cameras, silver-plated ware, clocks, and advertising paper fans, in less than carloads, from St. Louis, Mo., to San Francisco, Calif., for export to Manila, P. I., found unreasonable. Reparation awarded.

J. L. McNichol for complainant.

John F. Finerty and *E. C. Blanchard* for defendant.

REPORT OF THE COMMISSION

DIVISION 3, COMMISSIONERS HALL, CAMPBELL, AND COX

BY DIVISION 3:

Exceptions were filed by the Director General of Railroads, as agent, hereinafter called defendant, to the report proposed by the examiner.

Complainant, a corporation, manufactures tobacco at St. Louis, Mo. By complaint filed August 11, 1923, it alleges that the rates charged on two shipments of plug tobacco, in carloads, and on seven less-than-carload shipments of premium articles, including notions, clock watches, cutlery not plated, cameras, silver-plated ware, clocks, and advertising fans, in one of the cars of tobacco, shipped in May and June, 1918, from St. Louis to San Francisco, Calif., for export to Manila, P. I., were unreasonable. There were also included a less-than-carload shipment of matches, the claim on which was withdrawn at the hearing, and a less-than-carload shipment of printed matter upon which no claim for reparation is made. Reparation only is asked. The claim was presented informally within the statutory period.

The shipments moved on domestic bills of lading consigned to the collector of customs at San Francisco, Manila being shown as the final destination. The bills of lading also contained a notation that the tobacco was to be held in bond by the collector of customs for export. One carload moved over the Missouri Pacific and the other over the Wabash to Denver, Colo. Both moved beyond over the Union Pacific and Southern Pacific through Ogden, Utah. At that time the initial lines would accept traffic for export only upon

presentation of permits issued by the Pacific Coast terminal lines, and the terminal lines would not issue permits unless reservation of vessel space was first obtained for the movement beyond the Pacific ports. Vessel space was procured and the terminal lines issued the necessary permits for the shipments. The movement from San Francisco to Manila was on ocean bills of lading executed by complainant in accordance with reservations previously made as to one carload. The other carload moved from the port on a vessel that sailed 16 days prior to the sailing of the vessel upon which space had been reserved.

Charges were collected at the applicable domestic carload rates on the tobacco, and at the domestic class rates on the less-than-carload shipments of premium articles loaded in one of the cars. The table below shows the details of the shipments and the amount of reparation claimed, the rates being stated in amounts per 100 pounds.

Shipment	Commodities	Weight	Charged		Sought		Reparation claimed
			Rate	Amount	Rate	Amount	
May 17, 1918, car G. H. & S. A. 34372.	Plug tobacco.....	<i>Pounds</i> 86,516	<i>Cents</i> 135	\$1,167.97	<i>Cents</i> 85	\$735.39	\$432.58
June 17, 1918, car U. P. 77612.....	do.....	97,619	135	1,317.86	85	829.76	488.10
Do.....	Notions and clock watches. ¹	235	330	7.76	250	5.88	1.88
Do.....	Cutlery not plated.	93	285	2.65	220	2.05	.60
Do.....	Cameras and silver-plated ware.	78	660	5.15	500	3.90	1.25
Do.....	Clocks.	24	330	.79	250	.60	.19
Do.....	Paper fans, advertising.	245	330	8.09	250	6.13	1.96
Total.....							926.56

¹ Actual value of clock watches did not exceed \$1 each.

The rates sought are the lower contemporaneous export rates. The tariff naming the export rates provided in substance, among other things, that the export rates to San Francisco would apply only on freight originally consigned through with rail, port, and ocean charges fully prepaid or guaranteed, and for which through export bills of lading were issued prior to arrival of the freight at the port of exit. Complainant was under bond guaranteeing the ocean charges but did not procure a through export bill of lading prior to arrival of freight at port of exit because the St. Louis offices of the Union Pacific and Southern Pacific, at which complainant had formerly obtained export bills of lading on similar shipments, had been recently closed by defendant. Complainant contends that it made efforts to procure export bills of lading from the steamship lines at the port but could not procure them until the shipments reached the port. Complainant also applied to agents at St. Louis

of the Director General of Railroads for advice as to the manner in which export bills of lading could be obtained, but without avail.

Complainant does not attack the measure of the domestic rates as such. It contends, however, that the shipments were, in fact, exported in precisely the same manner as they would have been exported if the rule described had been observed, and that the charges collected were unreasonable to the extent that they exceeded those which would have accrued at the export rates. After the movement took place, and effective July 1, 1918, that portion of the rule requiring that export bill of lading be issued prior to arrival of freight at port of exit was eliminated from the tariff.

The defendant contends that the export rates, to the basis of which complainant claims reparation, were depressed and should be applied only where the tariff provisions were strictly observed. The provision here considered and certain other rules respecting export shipments were published on account of unusual congestion of freight for export at San Francisco and other Pacific ports. This congestion was due to the inability of owners of freight to secure vessel space, and the consignment of traffic to the ports for export without previous reservation of steamship space. He also contends that complainant did not use due diligence to obtain through export bills of lading, which could have been procured at Chicago, Ill., San Francisco, Calif., New York, N. Y., or Washington, D. C. Complainant answers that it made every effort which could be made within the scope of its knowledge or that of the director general's representatives at St. Louis, to procure through export bills of lading, but was unable to do so, primarily for the reason that the St. Louis offices of the Union Pacific and the Southern Pacific had been closed without notice to the shipping public as to the means by which and the places where through export bills of lading could be procured.

That the director general was warranted in publishing the tariff provision here considered is not questioned by complainant, but it clearly appears that the nonobservance of that provision did not impose any additional burden upon him in the handling of this traffic. Nor did the traffic contribute to the congestion of the port at San Francisco, which it was the purpose of the tariff rule to relieve. The situation here presented is substantially the same as that considered by us in *Anderson & Co. v. Director General*, 61 I. C. C. 64, wherein the domestic rates applied on shipments moving under substantially the same circumstances as those here presented were found unreasonable to the extent that they exceeded the export rates contemporaneously in effect.

Following *Anderson & Co. v. Director General, supra*, and upon the record we find that the application of the tariff provision to these shipments resulted in charges which were unreasonable to the extent that they exceeded those which would have accrued on the basis of the contemporaneous export rates; that complainant made the shipments as described and paid and bore the charges thereon; and that it has been damaged thereby and is entitled to reparation in the sum of \$926.56, with interest.

An appropriate order will be entered.

HALL, *Chairman*, concurring:

In this case it would appear that the Director General of Railroads had, as a practical matter, put it out of the power of complainant to comply with his tariff requirement that through export bill of lading be procured prior to arrival of freight at port of exit. In that respect this case is stronger for complainant than was the *Anderson case*, in which I dissented. In all other respects complainant did what was requisite under the tariffs in order to secure application of the export rates. On the whole I do not feel constrained to challenge the award of reparation here made.

93 I. C. C.

No. 15327

**J. D. GOODPASTURE v. NASHVILLE, CHATTANOOGA &
ST. LOUIS RAILWAY ET AL.**

Submitted September 5, 1924. Decided October 25, 1924

Charges collected on a shipment of corrugated boxes, knocked down, from Nashville, Tenn., to Houston, Tex., found illegal. Reparation awarded.

T. M. Henderson for complainant.

J. A. Brown for defendants.

REPORT OF THE COMMISSION**DIVISION 4, COMMISSIONERS MEYER, EASTMAN, AND POTTER****BY DIVISION 4:**

This case was submitted under the shortened procedure. No exceptions were filed to the report proposed by the examiner, but our findings differ somewhat from those which he recommended.

Complainant manufactures and deals in paper boxes at Nashville, Tenn., under the trade name of the Nashville Corrugated Box Company. By complaint seasonably filed, he alleges that the charges collected on a shipment of corrugated boxes, knocked down, from Nashville, Tenn., to Houston, Tex., were unjust and unreasonable. Reparation is sought and the establishment of the so-called carrier's convenience rule for the future.

The shipment moved in March, 1923, over the Nashville, Chattanooga & St. Louis to Memphis, Tenn., the Illinois Central to New Orleans, La., and the Gulf Coast Lines beyond, in two 36-foot cars, the first containing 27,700 pounds and the second 20,100 pounds. Charges were collected at the applicable commodity rate of 69.5 cents, based on the applicable minimum of 40,000 pounds, on the first car and on the actual weight on the second car under the so-called two-for-one rule.

Complainant had ordered a 50-foot car for this shipment, and the two 36-foot cars were furnished for the carrier's convenience. The entire shipment could have been loaded in a 50-foot car. The first car was loaded to full visible capacity. The ordinary loading of this commodity in a 36-foot car is about 12 tons. The minimum under the classification is 24,000 pounds, subject to rule 34. An examination of the tariff carrying the 69.5-cent rate discloses that it was

governed by western classification and Agent Leland's exceptions thereto. These exceptions provided, in substance, that when a carrier was unable to furnish a car of the size ordered two smaller cars might be used in lieu thereof, the "freight charges to be assessed on contents of both cars on basis of actual weight," subject to the minimum weight provided in rule 34 of the western classification for a car 50 feet in length. The minimum fixed by rule 34 for a 50-foot car, when the classification proper provided 24,000 pounds, was, and still is, 38,880 pounds. Complainant's shipment exceeded this minimum, and, therefore, charges should properly have been assessed on the basis of the actual weight of 47,800 pounds. There was, therefore, a straight overcharge of \$85.49.

We find that complainant made the shipment described and paid and bore charges thereon which were illegal to the extent that they exceeded those which would have accrued at the applicable rate on the actual weight of the shipment, that by reason of this illegal collection he was damaged in the amount of \$85.49, and is entitled to reparation in that amount, with interest.

An order will be entered in accordance with these findings.

93 I. C. C.

No. 15557

SCHLOSS & KAHN GROCERY COMPANY v. ST. LOUIS-
SAN FRANCISCO RAILWAY COMPANY ET AL.

Submitted September 11, 1924. Decided October 21, 1924

Rate charged on a carload of sorghum seed from Kansas City, Mo., to Montgomery, Ala., found not unreasonable but inapplicable. Refund of overcharge required.

S. S. Dudley for complainants.

M. W. Thomas for defendants.

REPORT OF THE COMMISSION

DIVISION 4, COMMISSIONERS MEYER, EASTMAN, AND POTTER

BY DIVISION 4:

This case was presented under the shortened procedure. No exceptions were filed to the report proposed by the examiner.

Complainant, a corporation engaged in the wholesale grocery and seed business at Montgomery, Ala., alleges by complaint seasonably filed that the charges collected on a carload of sorghum seed shipped on January 11, 1922, from Kansas City, Mo., to Montgomery were unjust, unreasonable, and inapplicable. We are asked to prescribe just and reasonable rates for the future and to award reparation. Rates will be stated in amounts per 100 pounds.

The shipment, weighing 76,050 pounds, moved over the St. Louis-San Francisco, hereinafter called the Frisco, to Birmingham, and thence to destination over the Central of Georgia, hereinafter called the Central. Charges were collected in the amount of \$585.59, based on a rate of 77 cents, composed of a proportional commodity rate of 19 cents to Memphis and sixth-class rate of 58 cents beyond. Complainant contends that the applicable rate was a lower combination of 61 cents, composed of a commodity rate of 29.5 cents to Mobile and the sixth-class rate of 31.5 cents beyond. The shipper routed the shipment "C. of G. at Birmingham, Ala." The 29.5-cent factor applied over the Frisco to Birmingham and thence over the Southern to Mobile. The 31.5-cent factor applied from Mobile to Montgomery over the Southern to Birmingham, thence the Central to Montgomery. The Frisco was a party to the Mobile rate as far as Birmingham; the Central a party to the Mobile-Montgomery rate from Birmingham to Montgomery. Complainant, there-

fore, claims that under the shipper's routing instructions the Mobile combination should have been applied under rule 5(b) of Tariff Circular 18-A, which provides:

If shipment moves to or from a point of origin or of destination or via a junction point with connecting or branch line at which interchange is made *directly intermediate to the base point upon which the lowest combination makes*, such combination must be applied; and it is not necessary to haul the shipment to such base point and back again to or through point of origin or destination or such junction point.

Complainant interprets this rule as permitting the application of the rate from Kansas City to Mobile over the Southern in connection with the Frisco, plus the rate from Mobile to Montgomery via Birmingham over the Southern and thence over the Central to destination. The lower combination would have applied had the shipment actually moved to Mobile and back again to Birmingham and then to Montgomery. It is obvious, therefore, that it was the duty of the carrier under the rule to apply the Mobile rate, notwithstanding that that route was not designated by the shipper, and the shipment was therefore overcharged.

Complainant contends that the rate charged was unreasonable to the extent it exceeded the contemporaneous rate of 29.5 cents on sorghum seed from Kansas City to Mobile. The distance from Kansas City to Montgomery is 829 miles and to Mobile 867 miles. It also contends that the rate charged was unreasonable as compared with the combination rate of 46 cents on corn from Kansas City to Montgomery based on a 19-cent rate to Memphis and 29 cents beyond. In support of this contention *Mangelsdorf Seed Co. v. A., T. & S. F. Ry. Co.*, 88 I. C. C., 120, is cited, wherein the rates on sorghum seed from Texas to Kansas City and other points were found unreasonable to the extent they exceeded the rates on corn and certain other grains. However, defendants show that ordinarily in the Southeast seeds are not accorded grain rates as they are in western territory.

For the purpose of showing that the rate assailed was not unreasonable, defendants refer to the rates on sorghum seed from Kansas City to a number of other points in Alabama for distances ranging from 722 miles to 921 miles and carrying rates from 72 cents to \$1.005.

We find that the rate assailed is not unreasonable but that the rate applicable was 61 cents per 100 pounds. We further find that the shipment was made as described; that the charges thereon were paid and borne by the complainant and that it was damaged thereby in the amount of the difference between the charges paid and those which would have accrued at the rate found to have been applicable; and that it is entitled to reparation in the sum of \$121.68, with interest.

An appropriate order will be entered.

No. 15653

CHARLES McCLINTICK, TRADING AS McCLINTICK & COMPANY v. PERE MARQUETTE RAILWAY COMPANY

Submitted September 2, 1924. Decided October 21, 1924

Carload of potatoes shipped from Sears, Mich., to Norton, Va., found mis-routed. Reparation awarded.

Charles McClintick for complainant.

William K. Williams and *William R. Seaton* for defendant.

REPORT OF THE COMMISSION

DIVISION 4, COMMISSIONERS MEYER, EASTMAN, AND POTTER

By DIVISION 4:

This case was presented under the shortened procedure. No exceptions were filed to the report proposed by the examiner.

Complainant, a produce merchant at Tustin, Mich., alleges by complaint seasonably filed that a rate of \$1 per 100 pounds collected on a carload of potatoes shipped November 15, 1921, from Sears, Mich., to Norton, Va., was unreasonable and unduly prejudicial to the extent that it exceeded 75.5 cents, the applicable rate over the route specified in the bill of lading. Reparation is sought.

The shipment was in bags and weighed 45,000 pounds. The bill of lading was written, at request of complainant's agent, by the station agent of the originating line, the Pere Marquette, at Sears, and shows routing over the "N. & W." (Norfolk & Western), which carried the lower rate. But it actually moved via Cumberland Gap, Tenn., and the Louisville & Nashville, which carried the higher rate. The agent at Sears asserts that he was requested orally by complainant's agent at that point to route the shipment via Cumberland Gap and erroneously inserted "N. & W." on the bill of lading, but that he waybilled the car according to the oral instructions and later requested complainant's agent to change the bill of lading accordingly, which was not done. The latter denies that he specified any other routing than that shown, and states that he is unfamiliar with the route via Cumberland Gap and is uninformed as to the carriers it embraces. The shipment was consigned to complainant's order, with instructions to the delivering carrier to notify the vendee at Norton upon its arrival.

This is essentially a question of fact as to what instructions actually were given the railroad agent. In view of the conflicting statements, which are irreconcilable, the specifications on the bill of lading must control. Accordingly, the originating carrier must be held guilty of misrouting, which resulted in excessive charges against complainant of \$110.25, exclusive of war tax.

We find that this shipment was made by complainant as described; that it was misrouted by defendant; that complainant paid and bore the charges and has been damaged in the amount of the difference between the charges paid and those which would have accrued at the rate applicable over the route specified in the bill of lading; and that he is entitled to reparation in the amount of \$110.25, with interest. We are without power to order refund of war taxes.

An order awarding reparation will be entered.

93 I. C. C.

No. 15669

CHATTANOOGA BOTTLE & GLASS MANUFACTURING
COMPANY v. SOUTHERN RAILWAY COMPANY ET AL.

Submitted September 11, 1924. Decided October 21, 1924

Rate charged on one carload of tank or furnace blocks from Tallapoosa, Ga., to Alton Park, Tenn., found unreasonable. Reparation awarded and reasonable rate prescribed.

John S. Fletcher and E. DeL. Wood for complainant.

Charles J. Rixey and Halsey McGovern for defendants.

REPORT OF THE COMMISSION

DIVISION 4, COMMISSIONERS MEYER, EASTMAN, AND POTTER

BY DIVISION 4:

This case was presented under the shortened procedure. No exceptions were filed to the report proposed by the examiner.

Complainant, a corporation, alleges by complaint seasonably filed that the applicable class A rate of 50 cents charged on one carload of tank or furnace blocks, shipped June 24, 1922, from Tallapoosa, Ga., to Alton Park, Tenn., was unjust and unreasonable to the extent that it exceeded 20 cents. We are asked to prescribe rates for the future to Chattanooga and Alton Park, which shall not exceed the contemporaneous fire-brick rates, and to award reparation. Rates are stated in cents per 100 pounds.

The shipment, weighing 69,600 pounds, moved over the Southern Railway from Tallapoosa, via Anniston, Ala., to Chattanooga, a distance of 181 miles. Alton Park is within the switching limits of Chattanooga, and the car was switched to that point, a distance of 3 miles, by the Tennessee, Alabama & Georgia. Total charges were collected in the amount of \$348. The Southern bore the burden of the defense on behalf of both defendants.

Tank or furnace blocks are fire brick of large size, and are used for the same purposes as fire brick. They move on fire-brick rates in official territory, from that territory to points in southeastern and Carolina territories, and from interior eastern points to southern points. The rating in the three major classifications is the same on both commodities. The contemporaneously applicable rate on fire brick from Tallapoosa to Chattanooga was 20 cents. Reparation is

asked to this basis. Effective September 15, 1922, the rate on fire brick from Tallapoosa to Chattanooga was reduced to 10.5 cents, 1 cent higher than the rate in the opposite direction. The blocks were part of a dismantled plant purchased by complainant and therefore the shipment was isolated. That fact is the chief reliance of defendant. Although that is a fact to be considered, it is not controlling, and the issue must be decided upon its merits. *Armacost & Co. v. M. & M. T. Co.*, 88 I. C. C. 187; *Meigs Pulpwood Co. v. Director General*, 78 I. C. C. 473.

In *National Paving Brick Mfrs. Assn. v. A. & V. Ry. Co.*, 68 I. C. C. 213, we provided a uniform brick list, in which tank or furnace blocks take the same rate as fire brick.

The rate charged on the weight of the shipment for the distance it moved yielded car-mile earnings of \$1.922, and 5.52 cents per ton-mile. On the same weight and distance the fire-brick rate of 20 cents would yield car-mile earnings of 76.90 cents, and 2.21 cents per ton-mile. Complainant offered many other comparisons which clearly indicate that the rate charged was unreasonable.

We find that the rate assailed was, is, and for the future will be, unreasonable to the extent that it exceeded, exceeds, or may exceed the contemporaneously applicable rate on fire brick from Tallapoosa, Ga., to Chattanooga and Alton Park, Tenn.; that the shipment was made as described; that complainant paid and bore the charges thereon; that it was damaged in the amount of the difference between the charges paid and those which would have accrued at the rate herein found reasonable; and that it is entitled to reparation in the sum of \$208.80, with interest.

An appropriate order will be entered.

93 I. C. C.

No. 15773

LEAKE & GOODLETT v. ST. LOUIS-SAN FRANCISCO
RAILWAY COMPANY

Submitted September 11, 1924. Decided October 21, 1924

One carload of yellow-pine lumber from Tupelo, Miss., to Memphis, Tenn.,
found overcharged and reparation awarded.

A. J. Ribe for complainant.

Robt. N. Nash for defendant.

REPORT OF THE COMMISSION

DIVISION 4, COMMISSIONERS MEYER, EASTMAN, AND POTTER

BY DIVISION 4:

This case was presented under the shortened procedure. No exceptions were filed to the report proposed by the examiner.

Complainant is a copartnership composed of M. E. Leake and R. F. Goodlett, engaged in the retail and wholesale lumber business at Tupelo, Miss. By complaint filed March 24, 1924, it alleges that the charges assessed on one carload of yellow-pine lumber shipped July 22, 1922, from Tupelo to Memphis, Tenn., were unlawful in violation of section 6 of the act. Reparation is sought.

The car was routed over defendant's line and contained 19,105 feet of material described in the bill of lading as "rough dry pine lumber." The applicable tariff provided that "where shipments do not pass over track scales, the following estimated weights will be used." The estimated weights per 1,000 feet provided for yellow-pine lumber were 4,000 pounds when green and 3,250 pounds when seasoned. The car was not weighed by defendant and charges in the sum of \$60 were assessed at the applicable rate of 7.5 cents per 100 pounds, which is not questioned, and an estimated weight of 80,000 pounds. Presumably the intention was to base the charges on the estimated weight of green lumber, but the charges assessed exceeded those which would have been so produced. Complainant contends that the lumber was seasoned and that the charges should have been based on the estimated weight of 3,250 pounds per 1,000 feet, which would have produced an aggregate estimated weight of 62,091 pounds.

There is no definite rule to follow in determining when lumber passes from the green to the seasoned stage. Complainant states, however, that in the trade yellow-pine lumber held on sticks for 45 to 60 days after being sawed is considered seasoned. The lumber comprising the shipment was accumulated in complainant's yard over a period of six months. Some of it had been stacked there 45 days, some six months, and the majority more than three months, and all of it remained at the mills from one to six weeks before being brought to complainant's yard. Complainant refers to four other shipments said to have consisted of approximately the same material, which were weighed by defendant at Tupelo and which ranged from 3,000 to 3,300 pounds per 1,000 feet. It also points out that defendant had two opportunities to weigh the car between origin and destination.

Defendant admits that the car was not weighed and also admits complainant's statement of its footage contents. It offers to settle the claim on the basis of a weight of 3,500 pounds per 1,000 feet. There is no provision in the tariff for using an estimated weight of 3,500 pounds per 1,000 feet. The claim was originally investigated on behalf of defendant by the Southern Weighing & Inspection Bureau, and defendant has submitted copies of letters from that bureau with reference thereto. The substance of this correspondence is that from the experience of the bureau extending over a period of a number of years, green pine lumber will weigh from 5,000 to 5,500 pounds per 1,000 feet, that perfectly dry lumber will range from 3,400 to 3,700 pounds, that it requires from 90 to 120 days for such lumber to thoroughly air dry, and that as the lumber comprising the shipment was 45 days dry, or about one-half dry, a weight of 4,250 pounds per 1,000 feet would be a conservative estimate. It contends that the estimated weight of 3,250 pounds provided in the tariff, and contended for by complainant, is very low even for perfectly dry stock. However, the question here concerns the application of the tariff.

The bureau's calculation is based on the assumption that the lumber had been cut but 45 days, whereas, according to complainant, all of it had been cut a greater time and the majority of it more than 90 days. In *Berthold & Jennings Lumber Co. v. Southern Ry. Co.*, 49 I. C. C. 113, it was shown that yellow-pine lumber grown in the vicinity of Iuka, Miss., generally did not exceed, when dry, 2,500 pounds per 1,000 feet, frequently weighing less, and averaged about 4,000 pounds when green, and that, unless wholly green, it was treated as dry by the carrier.

Notwithstanding the absence of any definite rule which may be followed, it seems clear from the facts of record that the material

comprising complainant's shipment may not be classed as green lumber and, therefore, under defendant's tariff was subject to the estimated weight provided for seasoned lumber.

We find that the charges collected on the shipment were inapplicable to the extent that they exceeded those which would have accrued based on the rate of 7.5 cents per 100 pounds and the weight of 62,091 pounds; that complainant made the shipment as described and paid and bore the charges thereon; that it has been damaged in the amount of the difference between the charges paid and those which would have accrued on the basis herein found legal; and that it is entitled to reparation in the sum of \$13.43, with interest.

An appropriate order will be entered.

93 I. C. C.

No. 15754

JOS. GENTILE COMPANY *v.* AMERICAN RAILWAY
EXPRESS COMPANY

Submitted September 25, 1924. Decided October 25, 1924

Rate charged on three carloads of cantaloupes shipped from Turlock, Calif., to New York, N. Y., and Boston, Mass., found unreasonable and unduly prejudicial. Reparation awarded and rates for the future prescribed.

P. P. Forrester for complainant.

A. M. Hartung, H. S. Marx, and Geo. S. Lee for defendant.

REPORT OF THE COMMISSION

DIVISION 4, COMMISSIONERS MEYER, EASTMAN, AND POTTER

BY DIVISION 4:

This case was presented under the shortened procedure. No exceptions were filed to the report proposed by the examiner.

By complaint seasonably filed complainant, a corporation, alleges that the rate of \$4.28 charged for the transportation by express of three carloads of cantaloupes shipped August 22, 1922, from Turlock, Calif., to New York, N. Y., and Boston, Mass., was unjust, unreasonable, unjustly discriminatory, unduly prejudicial, and in violation of the long-and-short-haul clause of the fourth section of the act to the extent that it exceeded rates of \$3.59 and \$3.93 on cantaloupes and melons from southern California points to New York and Boston, respectively. We are asked to prescribe just and reasonable rates for the future and to award reparation. Rates are stated in cents per 100 pounds.

The shipments contained 1,099 crates of cantaloupes weighing 75,512 pounds and moved in defendant carrier's express service from Turlock via Sacramento, Calif., Ogden, Utah, Omaha, Nebr., and Chicago, Ill. Charges of \$3,231.92 were collected at the applicable rate of \$4.28.

At the time of movement the joint rates on cantaloupes and melons from Brawley, Calif., and practically all other points in the Imperial Valley, in southern California, to New York and Boston were \$3.59 and \$3.93, respectively. Reparation is asked to this basis.

The Imperial Valley is near the Mexican border and shipments from that section move over the Southern Pacific lines to El Paso, Tex., and thence by the El Paso & Southwestern and Rock Island lines. Turlock is in central California, 93 miles south of Sacramento, and the shipments moved as above stated. The allegation of violation of the fourth section is not sustained.

Defendant shows the respective distances, in miles, from Turlock and Brawley to New York and Boston to be as follows:

	To New York	To Boston
From Turlock	3, 172 miles	3, 296 miles
From Brawley.....	2, 949 miles	3, 126 miles
Difference	223 miles	170 miles

The present rate adjustment has been in effect since cantaloupes were first shipped by express from California. The original rates were established by Wells Fargo & Company, viz, from the Imperial Valley \$2.50 and from Turlock \$3 to New York, and those rates were in effect on July 1, 1918, when the defendant took over the express transportation business on all lines of railroad under Federal control. Defendant contends that the circumstances and conditions surrounding the transportation of cantaloupes and melons to New York and Boston from the Imperial Valley, including Brawley, are substantially dissimilar from those applicable from Turlock and that there is no competition between cantaloupes and melons produced in the two sections, as the Imperial Valley shipping season is from May 21 to June 13, while the Turlock season is from July 27 to August 22; that complainant has not shown the volume of traffic under the rates used for comparative purposes, nor the various circumstances and traffic conditions surrounding the transportation, and that the reasonableness of the rate assailed can not be established by comparing it with another rate on the assumption that the latter rate is reasonable.

However, a blanket rate on fruits and vegetables applies from all California producing points to certain eastern cities and Turlock and Brawley enjoy the same rates on these commodities. The parity of rates was departed from by the establishment of rates on cantaloupes and melons from the Imperial Valley lower than those from Turlock. Defendant attempts to justify this departure by the larger movement from the Imperial Valley. But there would appear to be no justification for higher rates from Turlock on cantaloupes and melons, when Brawley and Turlock take the same rates on other commodities, especially in view of the slight differences in the distances shown above for the long hauls here considered. Transcontinental rail carriers provide the same rates

from both points on cantaloupes, melons, and other commodities to New York and Boston.

In *Express Rates, 1922*, 89 I. C. C. 297, we required effective June 21, 1924, a reduction in the rates on fruits, vegetables, berries, butter, and eggs, in carloads, the effect of which was to remove the increase of 13.5 per cent, made October 13, 1920, under authority of *Express Rates, 1920*, 58 I. C. C. 707.

We find that the rates complained of were, are, and for the future will be, unreasonable and unduly prejudicial to the extent that they exceeded, exceed, or may exceed, the contemporaneously applicable rates on cantaloupes and melons from Brawley; that the shipments were made as described; that complainant paid and bore the charges thereon; that it was damaged in the amount of the difference between the charges paid and those which would have accrued at the rates herein found reasonable; and that it is entitled to reparation with interest. Complainant should comply with Rule V of the Rules of Practice. An appropriate order for the future will be entered.

93 I. C. C.

No. 15798

MURRAY-EGAN-McLEOD COMPANY v. PENNSYLVANIA
RAILROAD COMPANY ET AL

Submitted September 11, 1924. Decided October 21, 1924

Class rate charged on a less-than-car-load shipment of iron pipe fittings from Barberton, Ohio, to Duluth, Minn., destined to Virginia, Minn., found inapplicable. Refund of overcharge required.

T. H. Trelford for complainant.

Guernsey Orcutt and *Dennis F. Donovan* for defendants.

REPORT OF THE COMMISSION

DIVISION 4, COMMISSIONERS MEYER, EASTMAN, AND POTTER

BY DIVISION 4:

This case was presented under the shortened procedure. No exceptions were filed to the report proposed by the examiner.

Complainant, a corporation dealing in pipe, pipe fittings, machinery, and accessories at Virginia, Minn., alleges that the fourth-class rate of 59 cents charged from Barberton, Ohio, to Duluth, Minn., on a less-than-carload shipment of iron pipe fittings weighing 7,000 pounds, destined to Virginia, was unreasonable and inapplicable to the extent that it exceeded a commodity rate of 33 cents. A reasonable rate for the future and reparation are sought. Rates are stated in cents per 100 pounds.

The shipment also comprised one keg of iron valves weighing 100 pounds, the rate on which is not in issue. It moved from Barberton on July 17, 1922, over the Pennsylvania to Cleveland Pier, Ohio, thence over the lake line of the Great Lakes Transportation Corporation to Duluth. No joint rates to Virginia were in effect. The charges beyond Duluth are not questioned. At the time of the shipment, there was published on page 53, section 2, of the tariff carrying the class rate, a commodity rate of 33 cents on "iron and steel articles, carloads, as described in note 8, pages 39 to 41." Note 8 provided: "Where reference is made on pages 50 to 54 to this note, rates apply on the following commodities, in either carloads or less carloads, unless otherwise specified." Pipe fittings, not including valves, without limitation as to whether carload or less than carload, were included in the list of commodities shown.

Defendants contend that complainant's interpretation of the tariff is erroneous. However, the record shows that while it was the intention to omit all reference to less-than-carload rates in connection with list of articles of iron and steel manufacture, through oversight this was not done in this tariff or subsequent reissues. We have repeatedly found that erroneous publication of rates does not justify a departure therefrom and that the intention of the framers is not controlling. *Seaboard By-Product Coke Co. v. Director General*, 62 I. C. C. 317, 329; *Russi & Co. v. O. S. R. R. Co.*, 45 I. C. C. 77; *Lamb-Fish Lumber Co. v. Y. & M. V. R. R. Co.*, 42 I. C. C. 470.

Complainant's evidence of unreasonableness of the rate charged was confined to a comparison of the rates from Barberton to Virginia and Duluth with the rates from Birmingham and Bessemer, Ala., to Boston, New York, Philadelphia, and Baltimore. It does not sustain that allegation.

We find that the 33-cent commodity rate was applicable on iron pipe fittings in less than carloads from Barberton to Duluth; that complainant made the shipment as described and paid and bore the charges thereon, and that it has been damaged to the extent that the charges collected exceeded the charges that would have accrued on the basis herein found to have been applicable; and that it is entitled to reparation in the sum of \$18.20, with interest.

An appropriate order will be entered.

93 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 2184

BRICK AND CLAY PRODUCTS BETWEEN WESTERN
TRUNK LINE POINTS

Submitted September 8, 1924. Decided October 28, 1924

Proposed reduced rates on articles in the general brick list from Mason City, Iowa, and other near-by points to Minnesota, Wisconsin, and Nebraska points found not to be unlawful. Orders of suspension vacated.

O. T. Cull and *F. B. Townsend* for respondents.

T. A. Matthews, jr., for Chicago, Rock Island & Pacific Railway Company; and *P. R. Flanagan* for Chicago Great Western Railroad Company.

Robert E. Quirk and *Norman, Quirk & Graham* for North Iowa Brick & Tile Company and National Clay Works; *R. O. Youngerman* for Mason City Brick & Tile Company; *P. R. Wigton* for A. Ochs Brick & Tile Company and Heron Lake Brick & Tile Company; *H. C. Wilson* for Sioux City Brick & Tile Company, Ballou Brick Company, and Tom Green Brick Company; *C. C. Landers* for Western Brick Company; *E. J. McMonigal* and *H. Mueller* for Twin City Brick Company; *W. E. Keller* for Northwestern Lumbermen's Association; and *H. Mueller* for St. Paul Association of Public & Business Affairs.

REPORT OF THE COMMISSION

DIVISION 2, COMMISSIONERS AITCHISON, ESCH, AND CAMPBELL
CAMPBELL, Commissioner:

By schedules filed to become effective July 15, 1924, and later dates, the Chicago Great Western, the Chicago, Milwaukee & St. Paul, the Chicago, Rock Island & Pacific, the Minneapolis & St. Louis, and the Chicago & North Western propose to reduce rates on brick and related articles taking same rates, in carloads, from Mason City, Sheffield, and other adjacent points in Iowa to the Twin Cities and Duluth, Minn., Omaha, Nebr., and certain near-by destinations. The schedules have been suspended until November 12 and December 13. Protests were received from brick and tile manufacturers at Springfield and Heron Lake, Minn., and Sioux City, Iowa.

Prior to the hearing these protests were partially withdrawn, as will later appear. Rates will be stated in cents per 100 pounds.

In *Ballou Brick Co. v. A., T. & S. F. Ry. Co.*, 77 I. C. C. 4, we prescribed a maximum scale of rates for single-line application from Sioux City to all points in Nebraska and in South Dakota east of the Missouri River, and a somewhat lower scale for single-line application from Sioux City to points in Minnesota on and south of the Chicago, Milwaukee & St. Paul extending from Ortonville, Minn., through Granite Falls, Glencoe, Cologne, and Farmington to and including Hastings, Minn. The addition of a differential of 1 cent per 100 pounds was authorized for joint-line hauls of 500 miles and less over two or more lines. We also prescribed nonprejudicial relationships of rates between Sioux City on the one hand and Mason City, Des Moines, Iowa, and Chanute, Kans., as representative of the Kansas gas-belt group, on the other hand, to said destination territories. In *Mason City Brick & Tile Co. v. Director General*, 77 I. C. C. 22, we prescribed the lower of those two scales of rates as reasonable maxima from Mason City to the same destination territories, and found that nonprejudicial rates from Mason City should not exceed the corresponding rates for like distances from Chanute, as representative of the Kansas gas-belt group, to all points in Nebraska, and from Heron Lake, Springfield, and certain other points in southern Minnesota, and Des Moines and Postville, Iowa, to all points in South Dakota east of the Missouri River. Subsequently the two proceedings were reopened for further hearing, and the carriers were authorized, pending final decision, to apply as maximum rates the higher of the two scales. Final decision in those cases has not yet been reached.

The destination territories dealt with in the reports in those cases embraced Omaha but not the Twin Cities and Duluth. In the *Ballou case* we said:

The present rate from Mason City to St. Paul, a distance of 140 miles, is lower than that which would obtain if the scale prescribed herein from Sioux City to points south of St. Paul were applied from Mason City to St. Paul, and while no relief from the provisions of the long-and-short-haul rule of the fourth section is granted, our findings herein are not to be construed as requiring an increase in the rate from Mason City to St. Paul to the level of the scale.

The following table shows the present and proposed rates from Mason City to St. Paul and Omaha, the corresponding rates from Sioux City, Springfield, and Heron Lake, and the rates which would result under the scales prescribed in the *Ballou case*:

	Distance	Present rate	Proposed rate	Prescribed scale
	Miles	Cents	Cents	Cents
To St. Paul, Minn., from—				
Mason City, Iowa.....	140	8.5	7.5	10
Sioux City, Iowa.....	266	12	12	13.5
Springfield, Minn.....	118	8.5	8.5	9.5
Heron Lake, Minn.....	140	8.5	8.5	10
To Duluth, Minn., from—				
Mason City, Iowa.....	292	12	10.5	15
Sioux City, Iowa.....	419	14.5	14.5	16
Springfield, Minn.....	271	12	12	14.5
Heron Lake, Minn.....	293	12	12	15
To Omaha, Nebr., from—				
Mason City, Iowa.....	208	10.5	9	12
Sioux City, Iowa.....	101	7	7	9.5
Springfield, Minn.....	275	14.5	14.5	13.5
Heron Lake, Minn.....	210	11	11	12

It will be noted that in all instances the present and proposed rates shown in the above table are lower than they would be under the prescribed scales, and that the relationships which would result under the suspended schedules would in all instances be more disadvantageous to Sioux City and the points at which the Minnesota protestants are located and more advantageous to Mason City than the relationships which would result if the prescribed scales in the *Ballou case* were applied from and to all of the points named.

Mason City brick manufacturers have to meet severe competition at Minnesota and Wisconsin points with manufacturers at Illinois points. From July 1, 1922, to October 16, 1922, the spread between the rates from Mason City and from Illinois was 6 cents to the Twin Cities and 5 cents to Duluth. On the date last named the Illinois rates were reduced as a result of our findings in *National Paving Brick Mfrs. Assn. v. A. & V. Ry. Co.*, 68 I. C. C. 213, and the spreads became 3.5 and 2.5 cents, respectively. Under the proposed rates the differences would become 4.5 and 4 cents, respectively. While this relationship is not as favorable to Mason City as the one which existed prior to October 16, 1922, the Mason City interests feel that it is a step in the right direction, and they earnestly contend that it should be permitted to become effective, at least as a temporary expedient pending decision upon the further hearing in the *Ballou* and *Mason City cases*.

Prior to the hearing the Minnesota and Sioux City protestants withdrew their protests against the proposed rates to Minnesota and Wisconsin points, under the impression that reductions would also be made in their rates. Such reductions are now in contemplation from Sioux City. We are not advised that any have been made since the hearing or are contemplated in the rates from the Minnesota origin points. The reasonableness and alleged prejudicial character of the rates from Illinois points to the Twin Cities and other Minnesota and Wisconsin points is now before us in No.

15061, *Western Brick Co. v. N. Y. C. R. R. Co.* In view of the withdrawal of all protests against the proposed rates to Minnesota and Wisconsin points, we see no reason for not permitting them to become effective, without prejudice to what may be done as a result of our conclusions in the pending cases referred to.

Witness for one of the Mason City manufacturers compared the proposed rate to Omaha with the rates from points in Illinois and Indiana to Minneapolis, Duluth, and Ashland, Wis., from Minnesota points to Sioux City, from Wisconsin points to Streator, Ill., and from Illinois points to Omaha. These comparisons are not convincing that the present rate from Mason City to Omaha is too high or is improperly related to the other rates exhibited. The volume of the brick movement from Sioux City to Omaha is not great; nevertheless the Sioux City protestants are anxious to remain in the Omaha market. They contend that the proposed reduction would place them at a disadvantage as compared with Mason City, and that it would require corresponding reductions to other points intermediate to Omaha, which they consider their own natural territory, in order to avoid fourth-section violations. A tariff check made by us reveals that subsequent to our initial suspension herein the Chicago, Rock Island & Pacific, which is not a party to the proposed rate to Omaha, published a rate of 9 cents from Mason City to Omaha, which was not suspended because not protested and became effective July 31, 1924.

We find that the proposed rates will not be unlawful, without prejudice to different conclusions which may be reached in other proceedings before us concerning the same rates. Our orders of suspension will be vacated and this proceeding discontinued.

93 I. C. C.

No. 10804

BARNETT OIL & GAS COMPANY v. DIRECTOR GENERAL
AS AGENT, LOUISVILLE & NASHVILLE RAILROAD
COMPANY ET AL.

Submitted June 11, 1924. Decided October 14, 1924

Upon further hearing, finding in original report, 59 I. C. C. 689, that the rate on crude petroleum, in tank-car loads, from Irvine and Beattyville, Ky., to Blue Island, Ill., was not unreasonable or unduly prejudicial, reversed. Reasonable rates prescribed, and reparation awarded.

Hopkins & Hopkins, A. L. Geiger, and Henry C. Keene for complainant.

John F. Finerty, John C. Brooke, and E. C. Blanchard for Director General of Railroads, as agent; *S. C. Matthews* and *Guernsey Orcutt* for Central Freight Association lines; *R. D. Hunter* for Cleveland, Cincinnati, Chicago & St. Louis Railway Company; and *J. J. Clark* for Chicago & Eastern Illinois Railroad Company.

REPORT OF THE COMMISSION ON FURTHER HEARING

EASTMAN, *Commissioner*:

The complaint in this proceeding, filed August 2, 1919, attacked the rate of 29 cents per 100 pounds on crude petroleum, in tank-car loads, from Irvine and Beattyville, in eastern Kentucky, to Blue Island, Ill., a point within the Chicago switching district, as unreasonable, unjustly discriminatory, and unduly prejudicial as compared with a rate of 24.5 cents then in effect from the mid-continent field in Kansas and Oklahoma to Chicago. In 59 I. C. C. 689 we found that the rate thus attacked was neither unreasonable nor unduly prejudicial, and dismissed the complaint. Subsequently complainant petitioned for a further hearing, which was granted. To the report proposed by the examiner, which followed our former conclusions, complainant filed exceptions, and the case was orally argued. Rates will be stated in cents per 100 pounds and, except as noted, are those in effect prior to the general increase of 1920.

No additional pertinent evidence was submitted at the further hearing, except to show that the present rate from the eastern Kentucky field, which embraces 12 shipping points besides those here involved, is 35 cents, composed of proportional commodity rates of 12.5 cents to the Ohio River and 22.5 cents beyond, while

the rate from the mid-continent field to Chicago is now 29.5 cents. As stated in our previous report, the weight of crude oil is estimated at 7.4 pounds per gallon when from the mid-continent field, and at 6.6 pounds per gallon when from the eastern Kentucky field. Taking these estimated weights into account, the revenue on a tank car containing 9,000 gallons is now \$11.43 more under the rate from the eastern Kentucky field than under the rate from the mid-continent field, instead of \$9.09 more as was the case when our original report was issued.

It appears, however, that what complainant desired was reconsideration of the evidence which it had submitted and reargument rather than a further hearing. The facts are comparatively simple. As pointed out in the previous report, the rate assailed compares favorably with the crude-oil rates from the eastern Kentucky field to other points in central territory, and defendants rely primarily upon that fact. On the other hand, as also pointed out in the previous report, the rate assailed is relatively higher, even when the lighter weight of the oil is taken into consideration, than the rate from the mid-continent field to Chicago territory, and complainant relies primarily upon that fact. Complainant also points out that the rates from the mid-continent field to Chicago and points grouped therewith were prescribed by us in *Midcontinent Oil Rates*, 36 I. C. C. 109, and were sustained in *Petroleum Oil and Petroleum Oil Products*, 59 I. C. C. 499. Moreover, by *Western Petroleum Refiners Asso. v. Director General*, 66 I. C. C. 426, rates on a similar level were extended to the Burkburnett and Ranger fields in Texas, and by *Wadhams Oil Co. v. C. & N. W. Ry. Co.*, 85 I. C. C. 705, to Milwaukee, Wis.

As shown in the previous report, the average distance from points in the eastern Kentucky field to Chicago is 452 miles, and of this total the average distance to the Ohio River is 143 miles and the average distance from the Ohio River is 309 miles. Therefore, the major part of the haul is in central territory. Complainant cites numerous cases which support the conclusion that the level of freight rates in central territory is in general lower than in other parts of the country. While the balance of the haul is in the higher-rated southeastern territory, complainant directs attention to the fact that a substantial portion of the haul from the mid-continent field to Chicago is in southwestern territory, where we have found transportation conditions to be at least no more favorable than in southeastern territory, and this comment applies with even greater force to the hauls from the Louisiana and Texas fields to Chicago.

In the previous report we were impressed by evidence which was offered by defendants and which was summarized as follows on page 691 of that report:

Defendants state that the eastern Kentucky oil originates on branch lines that traverse a mountainous country where operation is difficult and where but little is produced in the way of tonnage except oil, coal, and lumber; that these branch lines could not be profitably operated prior to their acquisition by the Louisville & Nashville; that the density of tonnage is much less south than north of the Ohio River; and that the transportation through to Chicago is from one rate territory to another and over at least two lines. They show, on the other hand, that the transportation to Chicago from the midcontinent field, in the case of two of the important oil-carrying lines, the Atchison, Topeka & Santa Fe and the Chicago, Rock Island & Pacific, is over a single line of railroad, and that tonnage and transportation conditions from the midcontinent field are in other respects more favorable than from the eastern Kentucky field, the former being the greatest oil-producing territory in the world. By comparison, production is small in eastern Kentucky and Chicago is a less important market for its oil. Defendants further point out that if the rate from eastern Kentucky to Chicago were reduced, it would be necessary for the Louisville & Nashville to accept a lower rate to Cincinnati and Louisville on Chicago oil than on oil to other points in central territory, or to require the lines operating from Cincinnati and Louisville to depart from the general basis of rates on oil in that territory.

Upon reargument complainant pointed out that the portion of the haul from the eastern Kentucky field to Chicago, which is over branch lines in mountainous country, can not be more than 10 per cent of the total at most; that "oil, coal, and lumber" are usually regarded as very remunerative tonnage; that there is nothing to indicate that these branch lines have not been profitable to the Louisville & Nashville since their acquisition; and that much oil tonnage in the mid-continent field originates on branch lines operated under comparatively unfavorable transportation conditions. It also shows that while the Atchison, Topeka & Santa Fe and the Chicago, Rock Island & Pacific have single-line hauls to Chicago from certain points of production in the mid-continent field, the hauls from most points in that field to Chicago are at least two-line hauls and that this is also true of the Texas and Louisiana fields. A further important fact to which complainant now directs our attention, and which was not considered in the previous report, is the fact that the rate on crude oil from the mid-continent field to Chicago is 83 per cent of the rate on refined oil, whereas the factor charged north of the Ohio River on eastern Kentucky oil is the same on both crude and refined. We have consistently held that reasonable rates on crude oil should be relatively lower than reasonable rates on refined oil, and there is here no showing that the rate on refined oil north of the Ohio River to Chicago is less than reasonable.

In the original report the average distance from producing points in the mid-continent field to Chicago territory—that is, to Chicago and points grouped therewith—was given as 620 miles. The average distance 452 miles from points in the eastern Kentucky field is therefore but 73 per cent of the average distance from the mid-continent field. If the rate on crude oil were made the same from the eastern Kentucky field to Chicago as from the mid-continent field, it would still be a relatively higher rate. In our opinion, after further consideration of the record, such a parity of rates would sufficiently allow for the mountainous character of the originating territory in eastern Kentucky, for the lesser volume of movement, and for the lighter weight of the oil.

We now find, therefore, that the rates on crude oil in tank cars from Irvine and Beattyville, Ky., to Blue Island, Ill., were unreasonable to the extent that they exceeded 20 cents per 100 pounds prior to June 25, 1918, 25 cents from June 25, 1918, to July 24, 1918, both inclusive, and 24.5 cents thereafter and until August 26, 1920, and that for the future they will be unreasonable to the extent that they exceed or may exceed 29.5 cents. We further find that complainant made shipments as described between August 2, 1917, and some time in 1919, and paid and bore charges thereon at the rates herein found unreasonable; that it has been damaged in the amount of the difference between the charges paid and those which would have accrued at the rates herein found reasonable; and that it is entitled to reparation, with interest. Complainant should comply with Rule V of our Rules of Practice.

No finding is made with respect to the rates between August 26, 1920, and the present time, as we do not understand from the record that any shipments have moved during this period.

HALL, *Chairman*, dissenting:

I can not concur in the majority report. Complainant has introduced no new and material evidence. The considerations which prompted dismissal of the original complaint have lost none of their force as a result of the further hearing and argument. The assailed rate compares favorably with the rate to other points in central territory where a comparison is peculiarly significant. For comparisons in support of complainant's contentions resort is had to a paper rate to St. Louis, since canceled, and to rates from the mid-continent field which are grouped both as to origin and destination. The Chicago destination group, for example, stretches south to within a few miles of St. Louis. Between such blankets and the specific rates here before us, applying from two points in eastern

Kentucky to one point in the city of Chicago, comparison is not helpful. Nor is there any real comparison between the traffic conditions here obtaining and those which attend the fierce competition by rail and pipe line between different parts of the greatest known producing field in endeavoring to reach such markets as are afforded by the regions surrounding St. Louis and Chicago. Measured in terms of revenue the rate assailed, because of different methods of computing weight, is but slightly higher than the rate from the vast mid-continent field. Under the rate prescribed the carriers will receive \$21.24 less on a carload of oil from the Kentucky field than on a similar shipment from the mid-continent field, and this in spite of the recognized difference in tonnage. The resulting loss of revenue is said to be compensated for by the difference in the average distances from the respective fields. Distance is but one of the elements to be considered in determining the reasonableness of rates, and on a commodity of this character is not nearly so important as volume of movement.

The majority lay hold of the spread between crude and refined petroleum which now characterizes rates from the mid-continent field and import it into eastern territory as a ground for condemning the rates now before us. If this be sound it must follow, not only that the rates from the 10 other producing points in eastern Kentucky are unreasonable, but that the entire rate structure north of the Ohio River is vulnerable under like attack. There also rate parity between crude and refined oils is prevalent. So elsewhere, as, for example, from New Orleans and Baton Rouge to East St. Louis. Such parity we have often recognized and have not condemned. But if, perchance, the time has come for condemnation—and nothing on this record shows that it has—is it not still true, as we said in *Standard Oil Co. v. Director General*, 60 I. C. C. 105 at 108-9:

Even assuming that there should be a different rate on crude than on refined oils, there is here no warrant for holding that the difference should be expressed by a reduction in the rate on the crude oils.

This expression we quoted with approval as recently as last year in *Lubrite Refining Co. v. D.-G. C. Ry. Co.*, 80 I. C. C., 515 at 517, and dismissed the complaint. The relationship of rates on crude and refined oils is not before us. If it were, the existence of such a parity has no probative force with respect to rates on crude oil in the absence of an affirmative showing that the rates on refined oil are maximum reasonable rates and higher than the maximum of reasonableness for crude oil. The record is bare of any such showing and the original finding should be affirmed.

COMMISSIONERS COX and McMANAMY dissent.
93 I. C. C.

No. 14830

RELEASED RATES ON STONE IN THE SOUTHEAST

Submitted March 28, 1924. Decided October 17, 1924

Applications for authority under paragraph (11), section 20, of the interstate commerce act to establish released rates on marble, granite, and other stone from, to, and within the Southeast, denied.

Wm. Burger and *C. D. Quinn* for Louisville & Nashville Railroad Company; *H. M. Cobb* for Southern Railway Company; and *T. T. Masengill* for Seaboard Air Line Railway Company.

Charles E. Cotterill for certain protestants.

C. R. Moffett for Traffic Bureau of Knoxville.

REPORT OF THE COMMISSION

DIVISION 3, COMMISSIONERS HALL, CAMPBELL, AND COX

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

By applications numbered 654 and 723, the Louisville and Nashville and other rail carriers in the Southeast seek authority under paragraph (11), section 20, of the interstate commerce act, on behalf of themselves and certain of their northern and western connections to establish released rates for the transportation of marble, granite, and other kinds of stone, in different stages of manufacture and finish, from, to, and within the southeastern portion of the United States. At the request of interested shippers hearing was had and a proposed report was served.

Values will be stated in amounts per cubic foot.

From 1880 to 1912, except during a few months in 1909 and 1910, ratings in the southern classification on marble, granite, and other kinds of stone were subject to limited carrier liability, the maximum declared or agreed value being generally 20 cents for rough stone and 40 cents for finished stone. During this period the southern carriers adopted the practice of making the commodity rates which they published on those articles subject substantially to the same limitations. If shipper and carrier failed to agree as to value the first-class rates applied both as to carloads and less than carloads during certain periods. During others it is not shown that any rate was applicable. The classification was amended in 1912 so as to eliminate ratings dependent upon declared or agreed values, but no similar

change was made in the commodity tariffs. Since the enactment of what is known as the second Cummins amendment in 1916, 39 Stat., 441, forming part of paragraph (11) of section 20 of the interstate commerce act, no carrier may lawfully publish rates based on the declared or agreed value of the commodity shipped, or limit the amount of its liability to the value so declared or agreed upon, without specific authority from us.

In 1921 the southern carriers filed a released-rates application requesting twentieth-section relief on a number of commodities, including stone. Protests against their action in so far as it related to stone were received from a number of shippers, as a result of which that portion of the application was withdrawn by the carriers and afterwards resubmitted as a separate application in the latter part of 1922. This application, No. 654, and a similar one, No. 723, filed in February, 1923, covering additional commodity rates on stone in the Southeast, are the subject of this proceeding. The applications are voluminous and the descriptions of the various kinds of stone and the territorial application of rates in connection therewith are too extensive to be here set forth in detail. Generally speaking the relief sought by these carriers is authority to incorporate in their tariffs in connection with their published rates a limitation of liability, in case of loss or damage, to 20 cents on rough stone and 40 cents on finished stone, such as generally existed during the period 1888 to 1912. A very small number of items provide a maximum declared value of \$1 for highly finished marble and granite.

Prior to the hearing the parties were advised by us that the reasonableness of the rates was not in issue but that the question to be determined was whether the nature and transportation characteristics of these commodities were such that the carriers should be accorded relief from the liability provisions of section 20, and that to determine this question the range of value and susceptibility to damage of each of the commodities included in the applications should be shown. ✓

The evidence both of the shippers and of the carriers was of a general nature and confined to marble and granite although the applications include stone of many kinds. Subsequent to the hearing the principal carriers represented withdrew the applications in so far as they relate to curbing, paving blocks, and cement building blocks.

The value of rough quarried granite blocks, including paving, flagging, and similar material, ranges from 35 cents to \$1.60. Rough quarried marble blocks are slightly more valuable, the lowest value stated in the record being 50 cents; but the range in value is approximately the same as in granite. Rough-sawed and sand-rubbed granite, which includes granite suitable for the exterior of buildings,

ranges in value from \$1.50 to \$9, while marble in the same state of finish ranges from \$2 to \$7, with an average of \$4.50. Polished and carved granite, including tombstones, has a value of from \$4.30 to \$10, and the value of similarly finished marble is from \$4.50 to \$12, with an average of approximately \$11. Such material usually takes higher rates than rough quarried, rough-sawed, or sand-rubbed granite or marble. When lettering or ornamental carving of either marble or granite is desired, such work is usually done, in whole or in part, at the place where the stone is to be used. Occasionally, however, highly finished and very valuable pieces are transported by the carriers in freight service.

✓ It was testified that the claims paid by the Louisville & Nashville Railroad Company during 1922 on stone of all kinds were 2.95 per cent of the revenue earned on this traffic, and that on marble shipped from Marietta, Ga., during that year the claims paid by the Nashville, Chattanooga & St. Louis Railway were 2.77 per cent of the revenue earned on those shipments. Claims for damage aggregate about 75 per cent of the total and claims for loss make up the remainder. The form of damage most frequently encountered is complete fracture. Claims are seldom filed for chipping or scratching of polished surfaces.

↓ There is no damage and little loss in transporting rough quarried blocks of either marble or granite. Claims on rough-sawed or sand-rubbed blocks are also insignificant in amount, although relatively greater than on rough quarried blocks. The manager of a granite quarry, the product of which is used for making tombstones, stated that his company's claims in connection with the shipment of rough blocks, by which term he apparently meant rough-sawed blocks, amounted over a period of four years to 0.02 per cent of the freight charges paid. Another shipper of building marble, which consists principally of sawed and sand-rubbed blocks, estimated that the claims filed by his company for loss or damage were less than 1 per cent of the freight charges paid.

Particular mention was made of marble slabs by both shippers and carriers. These slabs are about five-eighths inch thick and of different sizes, 5 by 2.5 feet being considered an average size. They are shipped in various degrees of finish. It was agreed that because of their shape there was some breakage in transit, but no figures showing the extent of the damage were submitted.

As to carved and polished marble and granite, an exhibit was introduced showing that claims for loss and damage collected by 122 of the customers of a wholesale dealer in marble and granite monuments during the period from 1918 to 1922, both inclusive, amounted to 1.52 per cent of the freight charges paid to the carriers during

that time. A questionnaire was sent to all of the customers of this company, and the exhibit was compiled from the 122 replies that had been received up to the time of the hearing. A similar exhibit based on the business of five retail dealers in finished marble monuments from 1919 and of three others from 1921 to the time of the hearing showed that the claims collected were 3.35 per cent of the freight charges paid. The difference in the ratio of claims to freight charges shown by the two exhibits was not explained. In both of these statements the comparisons made were of freight charges paid and claims collected during specific years. Hence an uncertain number of claims collected on shipments made in prior years were included, and any uncollected claims on shipments made during the periods taken were omitted. It was testified that claims are becoming less in amount and in number because of improved transportation conditions since the war period, and an exhibit was introduced showing that the claims filed by six retail dealers in finished marble monuments on shipments made by them in 1922 amounted to 1.42 per cent of the freight charges paid during that year, while in 1923, up to the time of the hearing, the percentage was 1.34. ✓

The fact that claims for loss and damage are frequent in the transportation of a given commodity is not in itself a valid reason for the establishment of released rates. If the commodity is fairly uniform in value, so that the carrier knows with a reasonable degree of certainty the liability it assumes when it accepts a shipment for transportation, it may and should establish reasonable tariff regulations relative to packing and loading, with a view to minimizing such claims, and, having done so, should then publish a single rate based on the known transportation characteristics of the commodity. Nor is the fact that an article has a wide range of value alone sufficient to warrant the establishment of released rates, because claims for loss and damage on that article may be negligible in any event. But where those conditions concur, where the susceptibility to loss or damage is comparatively high and the wide range in the value of the commodity makes the amount of any claim that may arise difficult to estimate, the carrier is at a disadvantage unless it is permitted to base its liability and its charges on a declaration of value obtained in advance from the shipper. In such a case a basic rate should be established conditioned upon the declaration by the shipper of a fair average value of the commoner forms of the commodity, together with one or more higher rates to apply when a greater value is declared, such higher rates to be no more than reasonably commensurate with the additional risk assumed by the carrier.

The value of the commodity transported is an element in rate making aside from the risk of loss or damage, because it serves to measure the value of the service rendered the shipper. But where rates based on declared or agreed value have been authorized by us, the statute accords shippers the right to understate the value for the purpose of securing the lower rate, and it is clear that if the excess of the unreleased over the released rates is more than the cost of insurance, shippers will ordinarily release the carrier and obtain transit insurance elsewhere. But frequently transit insurance can not be obtained. When it is not available, those shippers who are financially able to do so will assume the risk of loss themselves. The small shipper is less apt to be able to risk the loss of his less frequent shipments, and will thus in greater measure feel compelled to resort to the higher unreleased rates for adequate protection. The alternative rates which would result from the carriers' proposals will thus not work with equal justice to all.

The range of value of rough-quarried sawed, sand-rubbed, and polished granite or marble is not so great that the carriers can not estimate with a reasonable degree of accuracy what their liability will be in the event of loss or damage in transit. There is, therefore, no necessity for the establishment of released rates on those commodities. It is only where the marble or granite has been carved that the variation in value becomes extreme, and it is only then that claims for loss or damage are at all substantial, in proportion to the freight charges collected. Released rates on carved granite and marble may be proper or even desirable, but this record is not sufficiently definite in regard to them to enable us to prescribe a reasonable basic value, nor the relationship which should exist between the released and unreleased rates. The proposal of the carriers is to condition the application of their commodity rates on dressed, polished, or carved granite and marble upon an agreement by the shipper to accept from 40 cents to \$1 per cubic foot in satisfaction of claims for loss or damage. These figures represent from 3 to 23 per cent of the average value. In the event that the shipper does not wish thus to relieve the carrier from liability he will be given the alternative of paying the class rates. These class rates, according to an exhibit introduced, are from 18 to 240 per cent higher, although the difference between full liability and total exemption from liability for claims, if translated into a difference in the rate, would very probably be less than 5 per cent. We can not approve this proposal.

An order will be entered denying the applications.

No. 14779

GREAT WESTERN PAPER COMPANY v. CHICAGO &
EASTERN ILLINOIS RAILWAY COMPANY ET AL.

Submitted April 8, 1924. Decided October 17, 1924

Rates on bituminous coal, in carloads, from points in Illinois and western Kentucky to Ladysmith, Wis., found not unreasonable or unduly prejudicial. Complaint dismissed.

E. F. Brown and *Otto J. Carlson* for complainant.

A. H. Lossow for Minneapolis, St. Paul & Sault Ste. Marie Railway Company; and *H. J. Polack* for Chicago, Burlington & Quincy Railroad Company.

REPORT OF THE COMMISSION

DIVISION 3, COMMISSIONERS HALL, CAMPBELL, AND COX

BY DIVISION 3:

Exceptions were filed by complainant to the report proposed by the examiner.

Complainant, a corporation, manufactures pulp and pulp products at Ladysmith, Wis. By complaint filed March 5, 1923, it alleges that the rates on bituminous coal, in carloads, from mines in Illinois and western Kentucky to Ladysmith were and are unreasonable and unduly prejudicial. We are asked to award reparation and to prescribe reasonable and nonprejudicial rates for the future. Rates will be stated in amounts per net ton. The Illinois Coal Traffic Bureau intervened but was not represented at the hearing.

Ladysmith is a local point on the Minneapolis, St. Paul & Sault Ste. Marie Railway, hereinafter called the Soo Line. Complainant's plant consumes 25,000 tons of bituminous coal annually, 95 per cent of which is screenings, or fine coal, and the balance lump. To support its allegations of unreasonableness it relies chiefly upon comparisons of the rates assailed with rates on like traffic from the same points of origin to St. Paul and Minneapolis, Minn., hereinafter called the Twin Cities, and to Eau Claire, Wis. It stresses the fact that the rates to these points are applicable also to Donald, Wis., a point on the Soo Line 18 miles south of Ladysmith, and that the rates on fine coal to the Twin Cities and Eau Claire are lower

than those maintained on lump, whereas the rates to Ladysmith are the same on both grades. Approximately 265 of the 321 shipments on which reparation is sought originated at mines in the southern Illinois group, of which Herrin, Ill., will be used as representative. The following table shows the rates from Herrin to Ladysmith, Eau Claire, and Minneapolis, together with distances and ton-mile earnings:

From—	To Ladysmith			To Eau Claire			To Minneapolis		
	Distance	Rate	Ton-mile earnings	Distance	Rate	Ton-mile earnings	Distance	Rate	Ton-mile earnings
Herrin, Ill. (short line)-----	<i>Miles</i> 609	\$3. 77	<i>Mills</i> 6. 18	<i>Miles</i> 576	¹ \$3. 47	<i>Mills</i> 6. 02	<i>Miles</i> 646	¹ \$3. 47	<i>Mills</i> 5. 36
Do.....				576	² 3. 29	5. 72	646	² 3. 29	5. 09
Herrin, Ill. (via Chicago and Soo Line)-----	663	3. 77	5. 68	671	¹ 3. 47	5. 16	768	¹ 3. 47	4. 52
Do.....				671	² 3. 29	4. 90	768	² 3. 29	4. 28

¹ Lump.² Fine.

According to complainant its principal competitor is located at Eau Claire, and in support of its allegation of undue prejudice it relies on the fact that the same rates apply on paper outbound from Ladysmith and Eau Claire, from which it contends that the paper mill at Eau Claire has an undue advantage in rates on coal from Illinois and western Kentucky. There are no paper mills in the Twin Cities or at Donald.

Defendants state that the Twin Cities and Eau Claire are in the so-called Twin Cities group and that Ladysmith is in the Duluth group; that the rates to the Twin Cities are depressed by competition with coal moving from docks at the head of the lakes, and that as Eau Claire is intermediate to the Twin Cities over certain of the routes it could not take a higher rate than the Twin Cities without violating the fourth section. The spread of 18 cents between the rates on fine and lump coals from southern Illinois to Twin Cities and to Eau Claire, defendants explain, is due to the fact that in 1913 the rates on bituminous coal from Duluth to the Twin Cities were increased 6 cents; that in 1914 the rates from southern Illinois were increased 10 cents, followed by a like increase in 1915; and that the lines serving the Illinois mines, finding that they could not maintain this additional spread over Duluth on fine coal, reduced the rates on that grade 14 cents on December 15, 1915, thereby restoring the former relationship with Duluth.

An exhibit submitted by defendants shows that the \$3.77 rate assailed applies from Herrin to 123 points on the Soo Line in northern Wisconsin, including Park Falls, Rhinelander, and other

points at which competitive paper mills are located. Some of these mill points are less distant from the coal fields than Ladysmith. Among others, defendants instance rates on coal from Herrin to points in Iowa, Nebraska, Kansas, and Missouri ranging from \$3.27 to \$5.24, and yielding ton-mile earnings of 6.48 to 9.97 mills for distances ranging from 348 to 601 miles. They cite *North-western Traffic & Service Bureau v. C. W. Ry. Co.*, 80 I. C. C. 659, wherein we found not unreasonable or otherwise unlawful a rate of \$2.905 on soft coal from Manitowoc, Wis., to St. Paul, 309 miles, yielding 9.4 mills per ton-mile.

The rates from the origin groups to Ladysmith are lower than the scale rates on bituminous coal for like distances prescribed by us in *Holmes & Hallowell Co. v. G. N. Ry. Co.*, 69 I. C. C. 11, for application from Duluth and other Lake Superior points to destinations in Minnesota, North Dakota, and South Dakota. More recently, in the *Lake Dock Coal Cases*, 89 I. C. C. 170, we found, inter alia, that the rate of \$3.47 on lump coal from the southern Illinois fields to points in the immediate vicinity of the Twin Cities was unduly preferential of the operators in southern Illinois as compared with the rates from Lake Superior docks to the same points. We prescribed a relationship between the rates from southern Illinois and the rates from Lake Superior docks, which, in the event that the present rates from the Lake Superior docks are continued, will require an increase in the rates from southern Illinois from \$3.47 to \$3.75. No finding was made with respect to the rates to the Twin Cities, but it follows that the rates to those points will have to be readjusted in a like manner or fourth-section violations will result. Moreover, in the *Lake Dock Coal Cases*, *supra*, we found that the rates from the southern Illinois field to points in Wisconsin were unduly preferential of operators in that field as compared with the rates from Lake Michigan ports, and we likewise prescribed a relationship between the Lake Michigan dock rates and the rates from the southern Illinois mines, which, in case the present rates from the Lake Michigan docks are continued, will require an increase in the rates from the southern Illinois mines. In this contingency, the present rate on lump coal of \$3.47 from southern Illinois to Eau Claire will have to be increased to not less than \$3.55.

It will be noted from our action in the case last cited that we were of opinion that the rates from the southern Illinois fields to points in Minnesota and Wisconsin therein considered were depressed. In our view the record in the instant case contains nothing to indicate that the rates from the southern Illinois and other origin groups named in the complaint to Ladysmith are unreasonable. Furthermore, we are of opinion that the evidence

relied upon by complainant to prove undue prejudice is too meager and indefinite to justify such a finding.

We find that the rates assailed are not unreasonable or unduly prejudicial. The complaint will be dismissed.

CAMPBELL, *Commissioner*, dissenting in part:

I agree that the rates assailed were not and are not unreasonable, but I think they were and are unduly prejudicial as compared with the rates to Eau Claire, where complainant's principal competitor is located. Eau Claire is intermediate to the Twin Cities on the route of the Chicago & North Western but not over the Soo Line, which is the only carrier serving both Eau Claire and Ladysmith. It is true that the Soo Line will have to meet the rate of the North Western at Eau Claire or it can not stay in the business of moving coal to that point, but complainant also encounters competition at Eau Claire, which is equally entitled to consideration. If Eau Claire were intermediate to the Twin Cities over the Soo Line, the fact that the rate to that point was held down by virtue of the fourth section might present a set of circumstances so different from that at Ladysmith as to warrant a finding that the prejudice would not be undue, but, as stated, the fourth section does not preclude the Soo Line from removing the disparity in rates between Eau Claire and Ladysmith either by increasing the former or reducing the latter. I think it should be required to do either the one or the other, so that the rate to both points would be on about the same relative basis. A rate of 20 cents per net ton higher to Ladysmith than to Eau Claire would yield about the same ton-mile earnings to both.

93 I. C. C.

No. 15014¹CAMPBELL CONSTRUCTION COMPANY *v.* LA CROSSE &
SOUTHEASTERN RAILWAY COMPANY ET AL.

Submitted April 18, 1924. Decided October 17, 1924

Rates charged on sand and gravel, in carloads, from Winona, Minn., to Viroqua, Wis., found not unreasonable. Applicable rates found unreasonable. Waiver of undercharges authorized in part and complaints dismissed.

Harold G. Simpson for complainant.

George H. Gordon, T. M. Hanrahan, and G. A. Hoffelder for defendants.

REPORT OF THE COMMISSION

DIVISION 3, COMMISSIONERS HALL, CAMPBELL, AND COX

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant, a corporation, is a general contractor with principal offices at Minneapolis, Minn. It alleges that the rates charged on 37 carloads of sand and gravel shipped in September, 1922, from Winona, Minn., to Viroqua, Wis., were and are unreasonable. The prayer is for reparation and reasonable rates for the future. Unless otherwise indicated rates will be stated in cents per 100 pounds.

The shipments originated at Winona on the Chicago & North Western. From Winona to La Crosse, Wis., 29 carloads moved over the Chicago, Milwaukee & St. Paul, and 8 carloads over the Chicago, Burlington & Quincy, thence over the La Crosse & Southeastern. These lines will be referred to as the North Western, the Milwaukee, the Burlington, and the Southeastern, respectively.

When the shipments moved neither the Milwaukee nor the Burlington maintained joint commodity rates on sand and gravel to Viroqua in connection with the Southeastern. Charges were collected on the basis of combinations on Winona, 6.6 cents and 6.7 cents on the shipments moving over the Milwaukee and Burlington, respectively. These rates were composed of commodity rates of 3.5 to La Crosse over the Milwaukee and 72 cents per ton, equiva-

¹ This report embraces also No. 15014 (Sub-No. 1), Same *v.* La Crosse & Southeastern Railway Company et al.

lent to 3.6 cents per 100 pounds, over the Burlington, plus a commodity rate of 3.1 cents beyond. The 3.1-cent rate was published in a tariff of the Southeastern not on file with us and was restricted to apply only on traffic originating beyond La Crosse. The shipments over the Milwaukee were billed through to Viroqua; those over the Burlington were not. The latter were billed to the consignor at La Crosse and rebilled over the Southeastern to destination. The record shows that it was the original and continuing intention of the shipper that the shipments should be transported in a through movement from Winona to Viroqua. See *B. & O. S. W. R. R. Co. v. Settle*, 260 U. S. 166. The applicable rate in connection with both the Burlington and the Milwaukee was the joint class E rate of 12 cents. The shipments were undercharged.

The average weight of the shipments moving over the Milwaukee was 98,444 pounds, and over the Burlington 82,387 pounds, the latter being relatively low because box cars were used. The earnings per car-mile at the rates charged and on the basis of average weights were 92.8 cents for 70 miles, and 76.9 cents for 71.7 miles, on the Milwaukee and Burlington shipments, respectively. The applicable class E rate would have yielded car-mile earnings of 154 cents and 137 cents, respectively.

Viroqua is served by the Milwaukee and the Southeastern, but no track connection exists there between the rails of these two carriers. The Milwaukee has its own route from Winona to Viroqua. The Burlington has not. The North Western serves Winona and La Crosse but has no rails to Viroqua. The North Western in connection with the Southeastern maintains to Viroqua a joint rate on sand and gravel equal to the rate over the single-line route of the Milwaukee. The Burlington does not participate in joint commodity rates on sand and gravel to this point. Complainant compares the rates assailed with rates over the Milwaukee and over the North Western and the Southeastern, and with numerous other rates for similar distances. The following table is illustrative:

From Winona to—	Route	Distance	Rate
		<i>Miles</i>	<i>Cents</i>
Viroqua, Wis.....	Milwaukee-Southeastern.....	70	16.6
Do.....	Burlington-Southeastern.....	71.7	16.7
Do.....	North Western-Southeastern.....	75.5	5.5
Do.....	Milwaukee direct.....	85.8	5.5
Westby, Wis.....	North Western-Southeastern.....	70.8	5
Do.....	Milwaukee direct.....	78.2	5
Harpers Ferry, Iowa.....	do.....	76.3	5.5
Oukdale, Wis.....	do.....	74.2	5
Lynxville, Wis.....	Burlington direct.....	73.5	5.4

¹ Assailed rates.

Complainant also instances a rate of 6.3 cents on sand and gravel applying over the Burlington from Winona to Minneapolis, Minn., 117.8 miles, and comparisons are made with rates produced by distance scales prescribed by the State commissions of Iowa, Minnesota, and Wisconsin for intrastate application on sand, gravel, and crushed stone. The highest of these, the Wisconsin scale, produces a rate of 5.6 cents for a two-line haul of 75 miles.

The Milwaukee concedes that the applicable joint class E rate of 12 cents exceeds the combination of intermediates on La Crosse, composed of the commodity rate of 3.5 cents to La Crosse plus the 7-cent class E rate of the Southeastern beyond. Effective November 1, 1922, subsequent to the movement here considered, the Southeastern published a commodity rate of 5 cents from La Crosse to Viroqua. This rate is in effect at the present time.

Defendants do not endeavor to defend the applicable rates. They contend, however, that the rates charged were not unreasonable, and show that the factors to and from Winona compare favorably with numerous interstate rates applying from points in Iowa, Illinois, Minnesota, Missouri, Wisconsin, Michigan, and South Dakota. Comparisons introduced in evidence by defendants disclose that the combination rates assailed compare favorably with rates on sand and gravel for two-line application from Ottawa, Millington, and Wedron, Ill., to various points in Illinois, and from Oregon, Ill., to Beloit, Wis., for comparable distances. Sand and gravel are produced at these points of origin and there is said to be a movement under the rates instanced. Defendants refer to the fact that the movement from Winona to Viroqua requires a crossing of the Mississippi River and that out of the factors to La Crosse they absorbed the North Western switching charge of \$6.30 per car. The Milwaukee opposes establishment of a rate over its line via Winona and the Southeastern equal to the rate over its own line direct, contending that it would be short-hauled and that there is no need for such a joint rate. The present combinations, 8.5 cents over the Milwaukee and the Southeastern, and 8.6 cents over the Burlington and the Southeastern, would yield 109 cents and 108 cents per car-mile, respectively, on the basis of an average loading of 45 tons.

These shipments were unusual. Complainant used the sand and gravel in a highway which it was constructing for the State of Wisconsin. Prior to the movement these materials had been transported from Winona over the North Western and the Southeastern. During the period of the movement the North Western could not furnish cars, the construction work could not be delayed, and complainant resorted to the routes in connection with the Milwaukee and the Burlington. A 5.5-cent rate, as above indicated, applied

over the single-line route of the Milwaukee. Complainant did not use this available route and rate because its mixing plant was on the rails of the Southeastern. As soon as the North Western could furnish cars complainant's traffic was again routed over the North Western and the Southeastern.

In *Scheidenhelm Co. v. C., B. & Q. R. R. Co.*, 88 I. C. C. 319, we found a rate of \$1.10 per net ton, equivalent to 5.5 cents per 100 pounds, not unreasonable for application on shipments of sand made in 1921 from Dubuque, Iowa, to Whitton, Ill., 30 miles, which for an average loading of 45 tons would yield 165 cents per car-mile and 36.6 mills per ton-mile. That movement, like the one under consideration, required a crossing of the Mississippi River.

We find that the rates charged were not and are not unreasonable, but that the applicable rates were unreasonable to the extent that they exceeded the present combinations of 8.5 cents and 8.6 cents over the routes of the Milwaukee and the Burlington, respectively, in connection with the Southeastern. No necessity appears for the establishment of additional joint rates for the future. Defendants may waive collection of the outstanding undercharges in the amount of the difference between the charges collected and those which would have accrued at the rates herein found reasonable. The complaints will be dismissed.

No. 15243 (SUB-NO. 1)

LEVENE'S SONS v. DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY

Submitted July 30, 1924. Decided October 17, 1924

1. Shipments of used knapsacks, in carloads, from New York, N. Y., to Binghamton, N. Y., over an interstate route, during March, 1923, found to have been undercharged.
2. Rate on old rags, in cases, in carloads, from New York to Binghamton, over an interstate route, since March, 1923, found not unreasonable or in violation of the fourth section. Complaint dismissed.

John A. Smith for complainant.

W. J. Larrabee and *D. T. Lawrence* for defendant.

REPORT OF THE COMMISSION

DIVISION 3, COMMISSIONERS HALL, CAMPBELL, AND COX

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainants are John and Jacob Levene, copartners, dealing in waste and scrap material under the firm name of Levene's Sons at Binghamton, N. Y. By complaint filed September 10, 1923, they allege that the rate charged for the transportation of six carloads of old rags from New York, N. Y., to Binghamton, N. Y., during March, 1923, was unreasonable and in violation of the long-and-short-haul clause of the fourth section. We are asked to award reparation and to prescribe a reasonable rate for the future. Rates will be stated in cents per 100 pounds.

The shipments moved to destination over the Delaware, Lackawanna & Western, hereinafter called defendant, passing en route through New Jersey and Pennsylvania. They were billed as old rags, in cases, and charges were collected at the sixth-class rate of 25 cents applicable on old rags. In reality the shipments consisted of used Army knapsacks purchased by complainants from a dealer in surplus war material and shipped to them direct from the Army post. The knapsacks after removal therefrom of the leather strips and metal buckles were sold by complainants to manufacturers of paper. In *Industrial Traffic Assn. v. N. Y. C. & H. R. R. Co.*, 37 I. C. C. 607, 608, we said: "We have repeatedly declined to sanction the principle that old and secondhand articles are necessarily

entitled to lower ratings than the same articles when new." When the shipments moved knapsacks or haversacks, in boxes, any quantity, were rated first class in the official classification. The first-class rate from New York to Binghamton was 66.5 cents. The shipments were undercharged, and we so find.

Complainants introduced no evidence that the sixth-class rate charged or the first-class rate applicable were unreasonable, relying entirely upon an alleged violation of the fourth section. At the time of movement a commodity rate of 19 cents on old rags, *in bales*, was in effect from New York to Syracuse, N. Y. That rate applied through Binghamton, an intermediate point. It was not violative of the fourth section as to these shipments, because it applied only on rags, *in bales*, and not on knapsacks or haversacks, *in cases*. The 19-cent rate is subject to rule 77 of our Tariff Circular 18-A, and defendant stated that it would be published to Binghamton upon reasonable request.

We further find that the sixth-class rate of 25 cents on old rags from New York to Binghamton is not shown to have been or to be unreasonable or in violation of the fourth section.

The complaint will be dismissed.

No. 14945

MINNESOTA & ONTARIO PAPER COMPANY v. DIRECTOR
GENERAL, AS AGENT, BALTIMORE & OHIO RAILROAD
COMPANY, ET AL.

Submitted May 26, 1924. Decided October 17, 1924

Rates on wet wood pulp, in carloads, from International Falls, Minn., to certain destinations in central territory found not unreasonable. Complaint dismissed.

W. N. Webb and R. J. Henderson for complainant.

Royal T. McKenna for Director General of Railroads, as agent.

REPORT OF THE COMMISSION

DIVISION 3, COMMISSIONERS HALL, CAMPBELL, AND COX

BY DIVISION 3:

Exceptions were filed by complainant to the report proposed by the examiner.

Complainant, a corporation, manufactures wood pulp at International Falls, Minn. By complaint seasonably filed it alleges that the rates charged on 46 carloads of wet wood pulp shipped from International Falls to certain destinations in central territory between November 17, 1917, and January 23, 1919, were unreasonable. The prayer is for reparation. Rates will be stated in cents per 100 pounds, and, unless otherwise indicated, were those in effect prior to June 25, 1918.

The commodity shipped was a variety of wood pulp, brown in color, known as kraft pulp, manufactured by cooking wood pulp with black ash, a strong liquid composed of lime, soda ash, and salt cake. Complainant operates the only mill for the production of kraft pulp in Minnesota. Kraft pulp is shipped wet in rolls, the moisture content ranging from 50 to 60 per cent. It is commonly used for making wrapping paper or paper for paper bags and box board.

The shipments moved over various routes operated by defendants. No joint through rates were then in effect, and charges were collected at the applicable combination rates made either over Chicago, Ill., or Manitowoc, Wis., and consisted of commodity rates to those points plus 90 per cent of the sixth-class rates beyond.

In the fall of 1917 complainants requested the carriers to establish joint commodity rates on wood pulp from International Falls

to central territory in alignment with rates from eastern producing points. The railroads were taken under Federal control while the request was being considered by the individual lines, and complainants early in 1918 made a similar request of the United States Railroad Administration. After some delay joint commodity rates were established on August 29, 1919, to most of the destinations here considered. These joint commodity rates were made 6.5 cents higher than rates contemporaneously in effect to the same destinations from the Fox River district in Wisconsin. On December 30, 1919, the rates from the Fox River district were increased by amounts ranging from 1 to 6.5 cents following *The Fifteen Per Cent Case*, 45 I. C. C. 303, but no increase was made in the rates from International Falls and from Minnesota points taking the same rates. The rates from Minnesota were increased 33 $\frac{1}{3}$ per cent and from New England 40 per cent on August 26, 1920, and all were reduced 10 per cent on July 1, 1922. The cumulative effect of these changes was to narrow the differentials between northern Minnesota and Fox River to amounts ranging in nearly all instances from 3.5 to 6 cents. Recently in *Wood Pulp from International Falls, Minn.*, 85 I. C. C. 95, over the protest of this complainant, we approved a proposal of the carriers to increase the rates from International Falls and other Minnesota points to the basis that would have been in effect if they had been increased simultaneously with the increase from the Fox River district, maintaining the 6.5-cent differential, and if the resulting rates had been subject to the latter general increase and reduction.

The combination rates assailed are shown in the following table compiled from exhibits of record:

From International Falls to—	Distance	Rate	Ton-mile earnings
	<i>Miles</i>	<i>Cents</i>	<i>Mills</i>
Boston Mills, Ohio.....	999	29	5.8
Cuyahoga Falls, Ohio.....	990	28.5	5.7
Elkhart, Ind.....	732	24	6.5
Hartford City, Ind.....	809	26	6.4
Kokomo, Ind.....	669	25	7.4
Lockland, Ohio.....	947	28	5.9
Middletown, Ohio.....	968	27.5	5.6
Monroe, Mich.....	784	27	6.8
Rittman, Ohio.....	963	28.5	5.9
St. Marys, Ohio.....	875	26.5	6
White Pigeon, Mich.....	752	25.5	6.7

It was testified that the distances shown above, which were taken from complainant's exhibit, were computed over reasonable, available routes. The record indicates that the routes of movement in most instances were materially longer. For example, complainant shows 669 miles as the distance from International Falls to Kokomo,

Ind., whereas the distance over the route of movement is approximately 779 miles. To Monroe, Mich., complainant in making comparisons uses a distance of 784 miles, whereas the distance over the route traversed is given as 849 miles and the average of various available routes is 933 miles. The distance shown in *Wood Pulp from International Falls, Minn., supra*, is 890 miles. The ton-mile earnings disclosed in the table do not appear excessive. If they were computed on the basis of the routes of movement they would be even lower. Complainant made no effort to prove that the earnings under the rates assailed were unreasonable.

All but three of the shipments moved prior to the general increase of June 25, 1918. The rates shown in the above table are those in effect prior to that date. Complainant seeks reparation on the three shipments made subsequent to June 25, 1918, to the basis of the subsequently established joint rates and on shipments prior to that date to the basis of the subsequently established joint rates less the increases effective on that day.

Complainant compares the rates assailed with rates on wood pulp from the Fox River district and from eastern points of origin. The following table compiled from complainant's exhibits is illustrative:

To—	From International Falls		From Fox River district		From Berlin, N. H.		From Three Rivers, Quebec	
	Distance	Rate	Distance	Rate	Distance	Rate	Distance	Rate
	<i>Miles</i>	<i>Cents</i>	<i>Miles</i>	<i>Cents</i>	<i>Miles</i>	<i>Cents</i>	<i>Miles</i>	<i>Cents</i>
Boston Mills.....	999	29	601	15.8	1,011	18	913	18
Cuyahoga Falls.....	990	28.5	592	16.8	1,002	18	904	18
Elkhart.....	732	24	335	14.7	942	22.5	844	22.5
Hartford City.....	809	26	411	15.8	1,048	21	891	21
Kokomo.....	669	25	371	14.7	1,023	22.5	905	22.5
Lockland.....	947	28	549	15.8	1,009	20	911	20
Middleton.....	968	27.5	570	15.8	989	20	890	20
Monroe.....	784	27	443	15.8	806	18	700	18
Rittman.....	963	28.5	565	15.8	1,020	18	922	18
St. Marys.....	875	26.5	477	13.7	926	19.5	828	19.5
White Pigeon.....	752	25.5	354	14.7	931	21.5	845	21.5

It will be noted that rates from Berlin, N. H., are the same as those from Three Rivers, Quebec, to the same destinations, although, according to complainant's exhibits, distances from Berlin are materially longer. The comparison indicates that rates from Canadian and New England producing points are made with a marked disregard for distance, and the inference is strong that they are influenced by competition. As observed in *Wood Pulp from International Falls, Minn., supra*, transportation conditions from the two producing regions, Minnesota and New England, are not reviewed in the record so as to warrant drawing any definite conclusions from a
93 I. C. C.

comparison of their respective rates. With regard to the rates instanced from the Fox River district, the comment is pertinent that the joint rates from Minnesota were not established with regard to competition from the Fox River district, from which apparently there is no substantial movement of kraft pulp, but with regard to competition with eastern producers. *Wood Pulp from International Falls, Minn., supra.*

Complainant contrasts the combination rates charged on this kraft pulp with lower joint rates contemporaneously maintained on newsprint from International Falls to the destinations here considered. Complainant contends that this is an anomalous circumstance, since rates on wood pulp from the Fox River district, from Three Rivers, and from Berlin were the same as or lower than rates on newsprint. Comparisons of similar tenor are made with regard to rates on lumber. As tending to support this criticism of the combination rates, complainant points out that the joint rates established from International Falls on August 29, 1919, were lower than rates on newsprint to the same destinations. Pursuing further this aspect of the matter, complainant shows that during the period of movement rates from International Falls to various points in Wisconsin, Minnesota, and Illinois were lower on wood pulp than on newsprint. The average weight of the shipments was over 72,000 pounds. Newsprint is said to load to an average of a trifle over 52,000 pounds.

Complainant insists that since wood pulp is a raw material and not ordinarily subject to loss or damage there is no justification for rates on this commodity higher than on newsprint. Kraft pulp apparently is not a raw material used in the manufacture of newsprint. Aside from this, although we have condemned rates on raw materials higher than on the products manufactured therefrom, it does not necessarily follow from a showing that rates on wood pulp are higher than those on certain kinds of paper that the former rates are unreasonable in and of themselves. *Crown Willamette Paper Co. v. Director General*, 78 I. C. C. 273. It is a circumstance worthy of note that kraft pulp admittedly is of greater value than ordinary wood pulp.

The Director General of Railroads, as agent, hereinafter referred to as defendant, contends that the commodity rates from International Falls to Manitowoc and Chicago were depressed below a reasonable basis, and that, since the factors beyond were, on the basis normally obtaining in central territory, 90 per cent of sixth-class rates, the resulting combinations were not unreasonable. A rate of 15 cents applied on wet wood pulp from International Falls to both Manitowoc and Chicago prior to June 25, 1918, when it was increased to 19 cents. The distance from International Falls to Chicago is

631.7 miles and to Manitowoc approximately 490 miles. The average distance from the Fox River district is 234 miles to Chicago and 90 miles to Manitowoc. Defendant insists that the depressed character of the rate from International Falls is indicated by the narrow spread, distance considered, between the 12.5-cent rate from Fox River to Chicago and the 19-cent rate from International Falls to Chicago, and between the 8-cent rate from Fox River and the 19-cent rate from International Falls to Manitowoc.

Defendant cites various cases dealing primarily with reparation on specific shipments of wood pulp. In *United Paperboard Co. v. N. Y. C. R. R. Co.*, 62 I. C. C. 59, we found not unreasonable a rate of 22.5 cents charged on 13 carloads shipped in the latter part of 1918 from Lockport to Thomson, N. Y., approximately 320 miles. Defendant stresses *Dill & Collins Co. v. P. & R. R. Co.*, Docket No. 6313, unreported, wherein a rate of 22 cents assessed on 91 carloads of wood pulp shipped from Philadelphia, Pa., to Covington, Va., 425 miles, in the years 1912 and 1913 was found not unreasonable. The following rates approved in cases decided since the hearing in the instant case, although applied in territories remote from the one under consideration, are not without significance; 20 cents in October and November, 1918, from Niagara Falls to Glens Falls, N. Y., 403 miles, *International Paper Co. v. Director General*, 87 I. C. C. 142; 20 cents on August 25, 1920, from Niagara Falls to Thomson, N. Y., about 414 miles, *Iroquois Pulp & Paper Co. v. G. & J. Ry. Co.*, 88 I. C. C. 255; 19 cents prior to August 26, 1920, from Seattle to Camas, Wash., approximately 187 miles, *Crown Willamette Paper Co. v. Director General*, 85 I. C. C. 657; 18 cents from September 14, 1920, to December 28, 1921, equivalent to 13 cents prior to August 26, 1920, from Yarmouth, Me., to Bennington, N. H., 136 miles, *Monadnock Paper Mills v. B. & M. R. R.*, 87 I. C. C. 137.

Defendant contends that the movement was sporadic in character. Statistics introduced in evidence by defendant disclose that during the period of Federal control the movement of wood pulp to points in the territory here considered was light from International Falls as compared with that from other points of origin. It was testified that no record was found of a movement from International Falls from February 8, 1919, to the end of Federal control, although during a portion of this period the reduced rates of August 29, 1919, were in effect. The record is not clear as to whether there is or has been a movement since Federal control.

We find that the rates assailed were not unreasonable. The complaint will be dismissed.

No. 12477

MASSACHUSETTS OIL REFINING COMPANY *v.* BOSTON
& ALBANY RAILROAD COMPANY ET AL.

Submitted April 11, 1924. Decided October 25, 1924

Just, reasonable, and equitable divisions of joint rates established pursuant to our original findings herein, 66 I. C. C. 535, prescribed. Adjustment required upon the basis prescribed.

W. W. Meyer and J. D. Brady for petitioners.

Cravath, Henderson & de Gersdorf and *William W. Robison* for Fore River Railroad Corporation.

REPORT OF THE COMMISSION ON FURTHER HEARING

DIVISION 4, COMMISSIONERS MEYER, EASTMAN, AND POTTER

MEYER, Commissioner:

Exceptions were filed by the Fore River Railroad Corporation to the report of the examiner.

In the original report of this case, 66 I. C. C. 535, we found that the Fore River Railroad Corporation, hereinafter referred to as the Fore River, was a common carrier, and prescribed reasonable joint rates on petroleum, petroleum products, and fuel oil, in carloads, from complainant's refinery on the Fore River to destinations in the New England States. Upon petition of defendants, other than the Rhode Island Company, Frank H. Swan, Theodore F. Green, and Zenas W. Bliss, receivers, and the Fore River, the case was reopened for the purpose of prescribing the just, reasonable, and equitable divisions to be received by petitioners and the Fore River out of the joint rates prescribed, and determining what, for the period subsequent to the establishment of the joint rates, would have been the just, reasonable, and equitable divisions of such joint rates to be received by petitioners and the Fore River, and requiring adjustment to be made in accordance with such determination. Since the original hearing of this case, after a receivership, complainant has been succeeded by the Cities Service Refining Company, hereinafter referred to as the refining company.

Petitioners state that they offered the Fore River divisions of \$5 per car prior to July 1, 1922, and \$4.50 on and after that date, out of the joint rates prescribed, which they consider adequate for the

service performed by that carrier. The Fore River, on the contrary, has consistently maintained that it is entitled to a division of these rates equivalent to its local and proportional rate of 2.5 cents per 100 pounds, applicable on fourth, fifth, and sixth classes. The Fore River has withheld from the charges prepaid on shipments moved under the joint rates from the refining company's plant amounts sufficient to cover the division which it claims.

Using representative points of destination on the New Haven involving distances of from 2 to 167 miles and an average weight per car of 53,500 pounds and allowing 3 constructive miles to the Fore River for its haul, petitioners show that on the average, based on a division of \$4.50 per car, the New Haven would perform 96 per cent of the line haul under the joint rates, and receive 95 per cent of the revenue, while for 4 per cent of the line haul the Fore River would receive 5 per cent of the revenue. Upon the same basis, they show that if the divisions of the Fore River were 2.5 cents per 100 pounds it would receive 17.24 per cent of the average revenue for performing 4 per cent of the line haul. The Fore River properly contends that such comparisons are misleading, in view of its short line haul and the fact that it must provide terminals and perform spotting and switching service in connection with such shipments at the line-haul rates.

Petitioners submitted statistics relating to the operations of Class I roads of the New England region for 1922 and the first four months of 1923 for the purpose of showing the rates of return which these roads have earned during those periods. With the exception of the Bangor & Aroostook and the New York Connecting, the carriers to which these statistics apply are petitioners herein. The figures in the following statement, taken from these statistics, show the net railway operating income and rate of return on investment in road and equipment, including material and supplies on hand as of December 31, 1922, earned by the carriers in question during the periods stated:

Carriers	Investment in road and equipment ¹	Year 1922		Four months ended April 30, 1923	
		Net railway operating income	Rate of return on invest- ment	Net railway operating income	Rate of return on invest- ment
			<i>Per cent</i>		<i>Per cent</i>
Bangor & Aroostook.....	\$31,875,978	\$1,656,892	5.20	\$567,846	7.48
Boston & Maine.....	240,184,707	6,475,740	2.70	² 2,478,423	-----
Central New England.....	29,001,484	751,880	2.59	² 144,924	-----
Central Vermont.....	22,364,784	460,775	1.79	² 247,194	-----
Maine Central.....	66,249,626	2,842,643	4.29	80,104	.51
New York Connecting.....	27,956,084	1,155,176	4.13	517,218	7.77
New York, New Haven & Hartford.....	512,097,883	14,411,360	2.81	1,604,508	1.32
Rutland.....	25,287,259	550,432	2.10	275,083	4.57

¹ As of December 31, 1922, including material and supplies on hand.

² Italics indicate deficits.

In this connection it is urged by petitioners that the Fore River can not justly claim a division which would enable it to earn a return of 6 per cent on its claimed investment when other New England carriers with which the rates are to be divided are earning much less.

The history of the Fore River is set out in some detail in the original report of this case. Its capital stock, with the exception of qualifying directors' shares, is held by the Bethlehem Steel Corporation, which also controls the Bethlehem Shipbuilding Corporation, its principal shipper, hereinafter referred to as the shipbuilding company. The evidence indicates that as in the case of other industrial railroads, originally the Fore River was constructed primarily to serve an affiliated corporation, the shipbuilding company.

The trackage of the Fore River comprises 9.64 miles. The main line, which extends from a connection with the New Haven interchange track at East Braintree, Mass., to a point within the plant of the shipbuilding company in Quincy, Mass., comprises 2.37 miles of track; the remaining 7.27 miles consists of sidings and spurs. The distance from the New Haven interchange track to the entrance of the shipbuilding plant is 9,215 feet. The Fore River owns the property on which this portion of its line is located, together with that on which a number of short sidings and the spur leading to the property of the refining company are constructed, an aggregate mileage of about 12,000 feet. The remainder of its mileage, about 39,000 feet, is located within the plant of the shipbuilding company on property owned by that company. For the use of this portion of its right of way the Fore River under a lease pays the shipbuilding company an annual rental of \$5,000. Of the trackage in the shipbuilding plant, more than 35,000 feet consists of spurs and sidings, which are about 60 in number. These tracks extend to various parts of the shipbuilding company's plant. All of the tracks which serve that plant, except those located in buildings, are owned, maintained, and operated by the Fore River. However, the tracks of that carrier to the refining company's plant extend only to its entrance, the spurs within being owned by and located on property of the refining company.

The two principal shippers located on the Fore River are the shipbuilding company and the refining company. The rates prescribed herein are the only joint rates in which the Fore River joins. With the exception of coal and coke, on which rates of 30 cents per ton apply for movement over the Fore River, all other

traffic is moved under class rates per 100 pounds governed by the official classification, which are as follows:

Classes -----	1	2	3	4	5	6	Rule 25	Rule 26	Rule 28
Cents-----	5	5	5	2.5	2.5	2.5	5	4	3.5

Little traffic moves under the first three classes. Less-than-car-load traffic is negligible. In addition to line-haul service the Fore River performs intraplant switching for industries on its line at a rate of \$13 per hour.

The traffic of the refining company involved here consists wholly of outbound shipments loaded in privately owned cars. The empty cars intended for loading by the refining company, along with cars for other consignees, are placed by the New Haven on the interchange tracks which it owns and maintains at East Braintree. From this point such cars are moved by locomotives of the Fore River over its main line, usually to a point beyond the spur of the refining company. Here the empty cars for that company are switched out when necessary, moved over its spur, and spotted for loading. Outbound oil shipments from the refining company are ordinarily handled similarly in the reverse direction. The distance of loaded movement is about 1.5 miles. The evidence shows that this service is extremely simple, no interference, congestion, or operating difficulties being encountered.

The investment in road and equipment of the Fore River, including material and supplies on hand, was \$207,380.11 on December 31, 1919, \$292,224.86 on December 31, 1920, and \$302,232.65 on December 31, 1921. As indicating that these amounts are not unduly high, the Fore River submitted in evidence a valuation study purporting to show the value of its railroad property on April 28, 1923. In this valuation, cost of reproduction new is estimated at \$404,162.72 and cost of reproduction less depreciation at \$365,378.07. In reaching these results, average unit prices of the five-year period ended 1913 were applied to estimated quantities, except that the actual cost of recent additions and betterments was used when available. The estimated value of tracks within the plant of the shipbuilding company was included in the appraisal. No allowance was made to cover the value of the lease of property of the shipbuilding company used as right of way for such tracks.

The net income of the Fore River was \$13,201.28 in 1920 and \$13,090.04 in 1921. Its operations in 1922 resulted in a net deficit of \$15,163.48. These figures represent returns of 6.31 per cent in 1920 and 4.48 per cent in 1921 on the investment in road and equipment of the Fore River, including material and supplies. Upon the same basis the net income of three years yielded an average annual

rate of return of 1.39 per cent. The 1922 deficit was due principally to a heavy decline in gross revenues. This is shown by the following comparison of gross revenues and expenses for the three years:

	Gross revenues	Gross expenses
Year 1920	\$124,858.00	\$98,957.55
Year 1921	118,120.12	96,643.68
Year 1922	52,916.50	49,751.18

The following statement indicates the number of loaded cars interchanged by the Fore River with the New Haven during 1920, 1921, and 1922:

Shipped to or from—	1920	1921	1922
Massachusetts Oil Refining Company:	<i>Cars</i>	<i>Cars</i>	<i>Cars</i>
Petroleum products.....	271	1,838	1,970
All other products.....	533	1,268	64
Other consignors and consignees:			
All products.....	4,148	2,730	894
Total.....	4,952	5,836	2,928

The principal shipper on the Fore River other than the refining company is the shipbuilding company. It is clear from the above statistics of revenues and loaded-car movement that the deficit in the net income of the Fore River in 1922 was caused by a sharp decline in the shipments of the shipbuilding company.

The Fore River contends that under section 15(6) of the act it is entitled to such just, reasonable, and equitable divisions out of the joint rates as will pay the proportions of its operating expenses, taxes, rentals, and a fair return on the value of its property used in the service of transportation, properly attributable to the services performed under such rates. In *Federal Valley R. R. Co. v. T. & O. C. Ry. Co.*, 68 I. C. C. 499, we said:

The fact that the Federal Valley has been operating at a deficit does not of itself prove that it is fairly entitled to increased divisions, and still less when it is coupled with the fact that the coal tonnage from the mines located on its line has been far below normal.

In order to show the necessity for a division of 2.5 cents per 100 pounds the Fore River submitted the results of certain computations, which are intended to evidence the approximate cost, plus fair return, of the service performed in connection with shipments to and from the refining company's plant. The Fore River maintains a record of locomotive performance, from which the total engine hours worked may be divided as between interchange or line-haul service and intraplant switching service. From this record the engine hours attributable to interchange service were determined to have constituted the following proportions of the total engine hours dur-

ing the years stated: 1920, 54.13 per cent; 1921, 53.8677 per cent; 1922, 65.62 per cent. The engine-hour basis of allocating costs was approved in the *Chicago, West Pullman & Southern R. R. Co. Case*, 37 I. C. C. 408, and has been followed in a number of cases since that decision. These proportions of the operating expenses, taxes, rentals, and return at 6 per cent on investment in road and equipment, including material and supplies, comprise \$65,140.26 in 1920, \$72,266.63 in 1921, and \$49,731.57 in 1922. These amounts are said by the Fore River to be equivalent to the cost, plus return, of the entire interchange service. Prorated equally on basis of loaded cars handled, they produce average costs per car as follows: 1920, \$13.15; 1921, \$12.38; 1922, \$16.98. Upon basis of an average weight per car of 55,992 pounds on petroleum products these figures are reduced to the following amounts per 100 pounds: 1920, 2.259 cents; 1921, 2.229 cents; 1922, 3.233 cents. The Fore River contends that the results of this study justify a division of 2.5 cents per 100 pounds on the traffic involved.

The chief objection to this cost study lies in the failure of the Fore River to determine the proportion of interchange engine hours consumed in the service to and from the refining company's plant. The principal witness for that carrier testified that due to the manner in which its records were kept such a segregation was not possible. This, however, is not a sufficient reason for accepting the results of the cost study as true and accurate as applied to traffic to and from the refining company. While the computed costs per 100 pounds are no doubt correct as an average, the evidence does not show that the cost of the service to and from the refining company is the same as that to and from the shipbuilding company. If any inference is justified, it is to a contrary effect. The distance of movement to the refining company's plant is about 1.5 miles. In prescribing the joint rates we permitted for the Fore River haul an addition of but 2 miles to the mileage scales applicable from East Braintree over the New Haven and other New England railroads. Moreover, as previously stated, the service to and from the oil company's plant is extremely simple. On the other hand, the main-line haul alone to the shipbuilding company's plant varies from a minimum of 1.75 miles to a maximum of 2.37 miles. The evidence shows that cars are spotted at and switched from numerous points on spurs within that plant. The complicated outlay and the greater distances of haul tend to show that this service is more expensive than that to and from the refining company's plant. Evidence of record does not clearly disclose whether interchange service is performed to and from all of these spurs in the shipbuilding plant. If it is not, some

of the spurs are owned and maintained by the Fore River for intraplant switching purposes of the shipbuilding company. In any event the track maintained for the purpose of serving this plant is materially greater than that used for serving the refining company.

A large part of the Fore River's investment in tracks is of spurs within the shipbuilding plant. These tracks are maintained by the Fore River, which also pays a rental for the use of the right of way on which they are laid. On the other hand, the Fore River right of way extends only to the entrance of the refining company's plant, the spurs within that plant being owned and maintained by the refining company.

Petitioners urge, and with some weight, that if the Fore River provides all trackage required by the shipbuilding company and so relieves the owning industry of all investment in and maintenance of private sidings, it should not be permitted to charge the investment in or maintenance of that trackage to a study which relates to its common-carrier service performed for an independent shipper such as the refining company. The conclusion is inevitable that the interchange service to and from the shipbuilding company's plant is much more expensive than that to and from the refining company's plant. From this it follows logically that the cost study is erroneous in that it is predicated upon the assumption that the cost of interchange service is approximately the same to and from both plants.

The Fore River performs intraplant switching service for industries on its line at a tariff rate of \$13 per hour. This is not an inconsiderable proportion of that company's entire operations, as it required the following percentages of the total engine hours during the years stated: 1920, 45.87 per cent; 1921, 41.13 per cent; 1922, 34.38 per cent. These proportions of the operating expenses, taxes, and rentals of the years in question, together with return at 6 per cent on investment in road and equipment, including material and supplies, are as follows: 1920, \$55,200.15; 1921, \$50,494.19; 1922, \$26,055.65. The actual engine hours devoted to intraplant switching were 3,595 in 1920, 2,784 in 1921, and 1,063 in 1922. By dividing the engine hours worked in intraplant switching into the proportions of expense, including return, assigned to the performance of that service, it will be found that the expense per engine hour was \$15.35 in 1920, \$18.14 in 1921, and \$24.51 in 1922. Presumably a large proportion of this switching was done for the shipbuilding company on tracks within the plant. But no matter for whom done, these facts indicate that intraplant switching has for the years 1920, 1921, and 1922 been performed for much less than cost.

The Fore River argues that the division proposed by it compares favorably with the following switching rates of the New Haven, in cents per ton, net or gross, as rated:

At New Haven, Conn.....	51, minimum charge \$6.75 per car
At Springfield, Mass.....	38, minimum charge 3.60 per car
At Lowell, Mass.....	63, minimum charge 3.60 per car
At Boston, Mass.....	\$15 per car

The rates compared vary appreciably at the different points. No evidence was introduced to show the circumstances under which these rates were established, the character of the services involved, the lengths of hauls, or any of the transportation conditions under which they are maintained. No attempt was made to show that the service performed under them, all things considered, was substantially the same as that of the service involved here. The most that can be claimed is that the services under the rates compared, as well as those performed by the Fore River to and from the refining company, are all in the nature of switching.

The Fore River compares the division proposed by it with divisions accorded by the New Haven to the Moshassuck Valley Railroad, the Narragansett Pier Railway, the South Manchester Railroad, and the Grafton & Upton Railroad. With the exception of the Moshassuck Valley, no evidence was introduced bearing upon the character of the service, the volume of movement, operating conditions, or other pertinent factors under the divisions cited. In *Moshassuck Valley R. R. Co. v. N. Y., N. H. & H. R. R. Co.*, 69 I. C. C. 368, we found that divisions of 2.1 cents per 100 pounds accorded by the New Haven to the Moshassuck Valley for its average haul of 1.73 miles on traffic of the character here involved were not unreasonable, unduly prejudicial, or less than compensatory. During a selected month the average weight per car of the class traffic there involved was 28,140 pounds inbound and 14,740 pounds outbound, which on basis of the divisions approved produced an average revenue per car for all class freight interchanged during 1919 of \$6.68.

The New Haven and Fore River have never agreed upon rules for the payment of car rentals and the assessment of demurrage in connection with cars in the possession of the Fore River. The Fore River is a party to the *National Car Demurrage Rules and Charges* of the American Railway Association. On brief the Fore River urges that in addition to prescribing divisions to it out of the joint rates we should direct the adoption of a car-interchange arrangement such as will not operate to diminish the proportion of the joint rates to which the Fore River is thereby entitled. This question was not specifically made an issue by the order reopening the case upon the matter of divisions. Petitioners submitted no evidence

upon that point. The evidence as to it introduced by the Fore River is merely incidental to the question of divisions. Accordingly the record affords no basis for the findings requested by the Fore River.

We find that during the period from May 15, 1922, to but not including July 1, 1922, just, reasonable, and equitable divisions of the joint rates on petroleum, petroleum products, and fuel oil, prescribed in our original report in 66 I. C. C. 535, would have been \$8 per car to the Fore River Railroad Corporation and the remainder to the other defendant carriers; that on and after July 1, 1922, just, reasonable, and equitable divisions of the rates in effect were, are, and for the future will be \$7.20 per car to the Fore River Railroad Corporation and the remainder to the other defendants.

We further find that the divisions received by the Fore River Railroad Corporation should be adjusted on a basis not in excess of the charges above found just, reasonable, and equitable during the periods named.

An appropriate order will be entered.

93 I. C. C.

No. 14528

ATHLETIC MINING & SMELTING COMPANY v. KANSAS
CITY SOUTHERN RAILWAY COMPANY ET AL.

Submitted November 12, 1923. Decided October 17, 1924

Rates on zinc ore, in carloads, from points in Oklahoma on the Miami Mineral Belt and the Northeast Oklahoma Railroads, and from trunk-line and junction producing points in Missouri, Kansas, and Oklahoma, to South Fort Smith, Ark., found not unreasonable but unduly prejudicial. Non-prejudicial basis of rates from points on the Miami Mineral Belt and Northeast Oklahoma to South Fort Smith prescribed.

C. D. Mowen for complainant.

Robert N. Nash, J. E. Senne, J. R. Sewell, and J. L. Cooper for particular defendants.

REPORT OF THE COMMISSION

DIVISION 3, COMMISSIONERS HALL, CAMPBELL, AND COX

BY DIVISION 3:

Exceptions were filed by complainant to the report proposed by the examiner.

Complainant, a corporation, manufactures spelter at South Fort Smith, Ark. By complaint filed December 8, 1922, it alleges that since December 6, 1921, the rates charged by defendants for the transportation of numerous carloads of zinc ore from points in Missouri, Kansas, and Oklahoma to South Fort Smith have been and are unreasonable, unjustly discriminatory, and unduly prejudicial. We are asked to prescribe reasonable and nonprejudicial rates for the future and to award reparation. Rates will be stated in cents per 100 pounds.

Complainant's plant, 5 miles from Fort Smith, is served only by the Missouri Pacific. The points of origin are referred to as the Joplin and Oklahoma fields. The former field includes points in southwestern Missouri, such as Joplin, and in southeastern Kansas, around Galena. The latter field lies in the extreme northeastern portion of Oklahoma in the vicinity of Picher. Ore in the Oklahoma field is of higher grade and production in the Joplin field has gradually declined since 1916. It has now practically ceased. Substantially all ore shipped to complainant comes from points in the

Oklahoma field on two short lines, the Miami Mineral Belt, hereinafter called the Mineral Belt, and the Northeast Oklahoma. The Mineral Belt connects with the St. Louis-San Francisco, hereinafter called the Frisco, at Quapaw, Okla. At Baxter, Kans., it connects with the Frisco and also with the Kansas, Oklahoma & Gulf, hereinafter called the Gulf. The Northeast Oklahoma connects with the Frisco and Gulf at Miami, Okla.

Ore originating on the short lines moves to the junctions, Baxter, Quapaw, and Miami, for distances averaging 6 miles, and thence to South Fort Smith over either the Frisco to Fort Smith and the Missouri Pacific beyond, or over the Gulf to Okay, Okla., and the Missouri Pacific beyond. The average haul over these respective routes is approximately 197 miles. Cars are generally loaded to their maximum capacity. The average loading approximates 40 tons. At the time of the hearing in April, 1923, the price of the different grades of ore at the mines ranged from \$42 to \$46.50 a ton.

Through rates on zinc ore from points on the short lines to South Fort Smith are made up of combinations on the junction points mentioned. The factor to the junctions was increased from 3 to 4 cents on August 26, 1920, and since July 1, 1922, it has been 3.5 cents. The rate applicable from all trunk-line and junction points proper in both fields was and is the same, and constitutes the other factor of the through charge to Fort Smith. It was increased from 7.5 to 10 cents on August 26, 1920, and reduced to 7.5 cents on various dates between April 20 and June 26, 1922. Complainant is satisfied with the present 7.5-cent rate from the junctions. It seeks reparation to the extent that the factor to the junctions has exceeded 2.5 cents since December 6, 1921, and to the extent that the factor, or rate, from the junctions exceeded 7.5 cents between January 20 and June 25, 1922, inclusive. We are asked to prescribe for the future a through rate which shall not exceed factors of 2.5 cents to and 7.5 cents beyond the junctions.

Complainant purchases the same grades of ore and sells the product, spelter, in keen competition with zinc-smelting plants at Bartlesville, Kusa, and Dewar, Okla., referred to as the Oklahoma smelters, and at Collinsville, East St. Louis, La Salle, Peoria, and Chicago, Ill., and Grasselli, Ind., referred to as the east-side smelters. The basic price of spelter, irrespective of its point of production, is fixed by the East St. Louis market.

Prior to December 6, 1921, the factor to the junctions was the same on shipments to the complaining, the Oklahoma, and the east-side smelters. On that date it was reduced from 4 cents to 2.5 cents on shipments to the east-side smelters, and apparently at about the same time it was reduced to 3 cents on interstate and 2.5 cents on

intrastate shipments to the Oklahoma smelters. To these smelters the factors from the junctions have also been on the same basis as the rates from trunk-line and junction points in both fields, and the increases therein on August 26, 1920, were removed December 23, 1921, and January 20, 1922, on shipments to the Oklahoma and east-side smelters, respectively.

Prior to the period covered by the complaint the through rates and both factors thereof were the same to the Oklahoma smelters and to South Fort Smith. At the present time the through rates are lower by 0.5 cent on interstate and 1 cent on intrastate shipments to the Oklahoma smelters, because of the lower factors to the junctions. Through rates from short-line points to the east-side smelters have been and are as follows: August 25, 1920, 18.5 cents to East St. Louis, 22 cents to Peoria, and 25 cents to Chicago; August 26, 1920, 25, 29.5, and 33.5 cents, respectively; December 6, 1921, 23.5, 28, and 32 cents, respectively; and since January 20, 1922, 18, 21.5, and 24.5 cents, respectively. Thus, while the present through rates to the east-side smelters are 0.5 cent lower than on August 25, 1920, and bear the same relation to each other as on that date, the present through rate to South Fort Smith is 0.5 cent higher, because of the difference in the factors to the junctions. In other words, complainant's disadvantage is now increased 1 cent, and was greater during the periods referred to.

As previously shown, the average distance to South Fort Smith is 197 miles. Through Quapaw and Miami it is 156 miles to the Oklahoma smelters, and 366 miles to East St. Louis, 529 miles to Peoria, and 649 miles to Chicago. Under the average loading of 40 tons, the through rate to South Fort Smith on December 5, 1921, yielded earnings of 14.2 mills per ton-mile, 56.8 cents per car-mile, and \$112 per car. On that date the through rate to East St. Louis produced earnings of 13.6 mills per ton-mile, 54.6 cents per car-mile, and \$200 per car; on December 6, 1921, 12.9 mills, 51.6 cents, and \$188, respectively; and since January 20, 1922, 9.8 mills, 39.3 cents, and \$144, respectively. The earnings under the present through rate to South Fort Smith and the through interstate rate to the Oklahoma smelters are 11.1 and 13.4 mills per ton-mile, 44.6 and 53.8 cents per car-mile, and \$88 and \$84 per car, respectively.

The trunk-line defendants explain that the removal of the general increases of 1920 in the rates from trunk-line and junction points in the Joplin and Oklahoma fields to the east-side smelters was made at the request of producers in the Oklahoma field, following corresponding reductions in the ore rates from Utah mines to eastern seaboard territory by the lines operating through Omaha, Nebr., a large smelting point, to meet competition of the rail-and-water

routes through Pacific coast ports. Their failure to reduce the South Fort Smith rate at the same time was due to the fact that they received no request for that reduction until later. The Missouri Pacific and Frisco are willing to adjust the charges between January 20 and June 25, 1922, to the basis of rates in effect prior to the general increases of 1920, but their connections refuse to concur. The trunk lines are unwilling to accept less than 7.5 cents on South Fort Smith traffic. To demonstrate the low character of that rate they compare it with higher interstate and intrastate rates on zinc ore, for somewhat the same or less distances, and on lower-valued articles, such as common brick, coal, ground limestone, crushed stone, chatts, and tailings, for comparable distances, between various points in Missouri, Kansas, Oklahoma, Arkansas, and Texas. They further explain that the reductions from the junction points to the Oklahoma smelters were forced by adjustments of intrastate rates in Oklahoma.

The assailed factor to the junction points was 2.5 cents prior to June 25, 1918, and the short lines contend that, as it has since been no greater than authorized under the subsequent general increases of 1918 and 1920 and reduction of 1922, it was not and is not unreasonable. They assert that the present rate does not yield them adequate revenue for the service performed, and that they are seriously considering advancing it. Since this factor was reduced from 4 to 2.5 cents on ore to the east-side smelters, the short lines have received 3.5 cents up to July 1, 1922, and 3 cents thereafter, through the trunk lines shrinking their revenues. The trunk lines did this because of competitive conditions and because of the longer hauls and relatively higher rates and earnings per car to the east-side smelters than to South Fort Smith. The reduction in this factor on Oklahoma traffic was also affected by the intrastate adjustments previously referred to.

From December 6, 1921, to June 30, 1922, both dates inclusive, the short lines received 0.5 cent more for their hauls to the junction points on traffic destined to South Fort Smith than they received on traffic destined to east-side smelters. Similarly, from December 6, 1921, to June 30, 1922, inclusive, they received 1 cent more, and since July 1, 1922, they have received 0.5 cent more, on shipments to South Fort Smith than on shipments to the Oklahoma smelters. The service performed by them on all shipments is identical.

We find that the through rates on zinc ore, in carloads, from points on the Mineral Belt and the Northeast Oklahoma to South Fort Smith were not and are not unreasonable, but that they were, are, and for the future will be unduly prejudicial to complainant and

unduly preferential of its competitors operating the east-side smelters to the extent that the factors of the Mineral Belt and the Northeast Oklahoma on traffic to South Fort Smith exceeded, exceed, or may exceed by more than 0.5 cent the factors of those lines on like traffic to the east-side smelters. We further find that subsequent to January 20, 1922, such through rates were unduly prejudicial to complainant and unduly preferential of its competitors operating the east-side smelters to the further extent that the factors from the junction points of the Mineral Belt and the Northeast Oklahoma and their connections, defendants herein, to South Fort Smith included the increases made effective on August 26, 1920. This undue prejudice was removed by voluntary adjustments made on different dates subsequent to January 20, 1922, over the various routes of defendants.

No damage is shown to have resulted from the undue prejudice shown to have existed and to exist. An appropriate order for the future will be entered.

93 I. C. C.

No. 15268

ARMOUR GRAIN COMPANY ET AL. *v.* ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY ET AL.

Submitted June 16, 1924. Decided October 17, 1924

1. Following *Clay Grain Co. v. A., T. & S. F. Ry. Co.*, 78 I. C. C. 539, aggregate of line-haul rates and port switching charges at Galveston, Tex., on export wheat and other grains taking the same rates, in carloads, from points in Missouri, Iowa, Minnesota, Nebraska, Kansas, Colorado, and Oklahoma, found unreasonable. Reparation awarded.
2. Aggregate of line-haul rates and trackage charge at Texas City, Tex., on the same commodities from the same territory of origin, found unreasonable. Reparation awarded.

W. R. Scott and *E. H. Tipton* for complainants.

E. H. Hogueland and *C. V. Topping* for Rea-Patterson Milling Company, intervener.

C. S. Burg for defendants other than Texas City Terminal Railway Company and Galveston Wharf Company; and *E. C. Guion* for Texas City Terminal Railway Company.

REPORT OF THE COMMISSION

DIVISION 3, COMMISSIONERS HALL, CAMPBELL, AND COX

BY DIVISION 3:

Exceptions were filed by defendant Texas City Terminal Railway to the report proposed by the examiner.

Complainants, Armour Grain Company and the Larabee Flour Mills Corporation, and intervener, the Rea-Patterson Milling Company, hereafter referred to collectively as complainants and individually as the Armour, Larabee, and Rea-Patterson companies, respectively, are corporations buying and selling grain, and shipping it from central and western States to domestic and foreign markets, with principal offices at Chicago, Ill., Kansas City, Mo., and Coffeyville, Kans., respectively. By complaint and intervening petition filed September 6, 1923, and November 30, 1923, respectively, they allege that the exaction by defendants of a charge on grain for export, in carloads, for switching from connections with the road-haul carriers to the export elevators at Galveston, Tex., between March 1, 1920, and June 30, 1923, and for trackage at Texas City, Tex., between October 25, 1920, and September 6, 1923,

in addition to the line-haul rates from points in Missouri, Iowa, Minnesota, Nebraska, Kansas, Colorado, and Oklahoma, resulted in through transportation charges which were unjust and unreasonable to the extent of the switching and trackage charges. We are asked to award reparation only. Informal complaints covering numerous shipments subjected to the charges complained of were filed with us as follows: (1) At Galveston, during July and August, 1923, by Armour company; on March 13, 1922, by Larabee company; and on July 12 and 13, 1923, by Rea-Patterson company; (2) at Texas City, on August 6, 1923, by Armour company.

All of the shipments made by the Larabee and Rea-Patterson companies moved through Galveston; those made by Armour company moved through both Galveston and Texas City. Some shipments originated at points in States other than those named in the complaint and can not be considered upon this record. The situation at Galveston will be first considered.

In *Clay Grain Co. v. A., T. & S. F. Ry. Co.*, 78 I. C. C. 539, hereafter referred to as the *Clay case*, we found, among other things, that the aggregate charges for the through transportation service, composed of the line-haul rates plus the switching charges at Galveston, on wheat and other grains taking the same rates, in carloads, from points in Oklahoma, Kansas, Nebraska, South Dakota, North Dakota, Missouri, Iowa, Minnesota, New Mexico, Colorado, Wyoming, Montana, Idaho, and Utah to Galveston for export had been since January 1, 1917, and for the future would be, unjust and unreasonable to the extent that they exceeded the line-haul rates exclusive of such switching charges. Reparation was awarded. An order was entered on April 10, 1923, requiring the establishment of rates for the through service not exceeding the line-haul rates then in effect, on or before June 30, 1923. Rates in conformity with the order were established on the latter date.

Subsequent to the decision in the *Clay case*, defendants refused to consent to awards of reparation to complainants on the special docket, insisting upon their right of cross-examination on the question of damage. Defendants do not question the adequacy of the proof of damage submitted by complainants at the hearing.

Following the *Clay case*, and upon this record, we find that the aggregate charges assailed for the through transportation service, composed of the line-haul rates plus the switching charges at Galveston, on wheat for export, and on other grains taking the same rates, in carloads, were unreasonable to the extent that they exceeded such line-haul rates exclusive of the switching charges at Galveston; that complainants made the shipments as described and paid and

bore the charges thereon; that on shipments made prior to June 30, 1923, and not barred by the statute of limitations they have been damaged in the amount of the difference between the charges paid and those which would have accrued at the rates herein found reasonable, and are entitled to reparation, with interest. Complainants should comply with Rule V of the Rules of Practice.

Texas City is a port on the west side of Galveston Bay, a short distance north of Galveston. Its origin and early history are set forth in *In Re Wharfage Charges of the Galveston Wharf Co.*, 23 I. C. C. 535, and *In Re Wharfage Charges at Galveston*, 26 I. C. C. 695, the latter hereinafter referred to as the *Second Wharfage case*. Its only grain elevator, a modern concrete structure of 500,000 bushels capacity, was constructed in 1910. This is owned and, prior to October 1, 1920, was operated as a public elevator by the Texas City Terminal Railway, hereinafter called defendant. Since that date the elevator has been leased at an annual rental of \$12,000 to the Export Elevator Company, of which the Armour Company is a subsidiary, and apparently operated by the latter primarily for its own benefit, although available to the public. The export grain handled through the elevator amounted to 3,189,083 bushels from 1912 to 1919, inclusive, 3,027,544 bushels during 1920, 15,321,467 bushels during 1921, and 5,334,485 bushels during 1922.

Defendant is the only rail line serving Texas City. Its line connects at Texas City Junction, Tex., with the Galveston, Harrisburg & San Antonio, the Galveston, Houston & Henderson, the International & Great Northern, and the Missouri, Kansas & Texas of Texas, the last two operating over tracks owned by the Galveston, Houston & Henderson; also at Texas City Terminal Junction, Tex., with the Gulf, Colorado & Santa Fe. These are the line-haul carriers reaching Galveston from the north. The points of connection are 4.1 and 6.3 miles, respectively, west of Texas City and 10.7 and 11.4 miles, respectively, north of Galveston. All cars destined to Texas City are placed by the line-haul carriers on the interchange tracks at the connecting points and handled thence to points of delivery by defendant. Cars of grain for export are first moved to defendant's so-called hold yards, from one-third mile to a mile west of the elevator, and remain there until the elevator is prepared to receive them, a period averaging from 10 to 15 days. They are then switched to the elevator. From August 15, 1913, to September 15, 1923, defendant assessed a trackage charge of 50 cents per car for the use of its tracks during whatever period the cars remained in its hold yards awaiting delivery to the elevator. This is the charge of which com-

plaint is made. It was canceled on the latter date upon representation of the Armour company that if it were continued that company would cease to move grain through Texas City.

The trackage charge was not related to demurrage charges, which accrued to the line-haul carriers. While defendant operated the elevator the trackage charge was published in its individual tariffs of rates, rules, and regulations applying on grain handled through the elevator, and was collected monthly from users of grain space in the elevator. When the Armour company leased the elevator defendant canceled its individual tariff; the Armour company published a private tariff of rules and charges for the same services, except trackage; and the publication of the trackage charge was transferred to an agency tariff of terminal charges, etc., at Texas City and other Gulf ports. Thereafter, at the request of the Armour company, the charge was placed on the individual expense bills issued by the line-haul carriers for the through charges.

Defendant contends that the trackage charge was not a part of the through rates, but instead bore the same relation to charges against elevation operations of the elevator as those for cleaning, blowing, scouring, drying, turning, etc., published in the same tariffs; also that it was one of the considerations for the lease of the elevator, and consequently the Armour company suffered no damage and should not be awarded reparation. The latter contention is not sustained by the evidence. Defendant was a party to the tariffs naming the through export rates on grain from the points of origin here considered to Texas City. It received a division out of such rates, fixed in 1913 at \$3.50 per car in the *Second Wharfage case*, and it now receives \$6.30 per car under the subsequent general increases and reductions. In addition to that division and in addition to the through rates, it assessed and collected the trackage charge for its own account under tariffs filed with us for application on interstate shipments. The trackage charge represented compensation to defendant as a common carrier for service rendered in connection with the through interstate transportation of the shipments.

Complainants introduced considerable evidence to demonstrate the reasonableness of the line-haul rates, exclusive of the trackage charge, for the through service. Generally speaking this evidence is substantially the same as that introduced in the *Clay case* and the discussion of it in the report in that case need not be repeated, as the line-haul rates to Galveston there considered applied also to Texas City. Shipments to Texas City move to the points of interchange with defendant over the line-haul carriers that serve Galveston, and the through hauls are slightly shorter to the former than to the latter point. Defendant's division out of the joint rates to

Texas City corresponds to the switching charges of the terminal, or delivering, lines at Galveston. In the *Second Wharfage case* we found the terminal service at Texas City and Galveston to be of the same general character, and the record here does not warrant a different conclusion. Defendant was unable to explain the circumstances surrounding the establishment of the trackage charge. The report in the *Second Wharfage case* clearly indicates that compensation for the service for which it was assessed was included in the division to defendant there fixed.

We find that the aggregate charges assailed for the through transportation service, composed of the line-haul rates plus the trackage charge at Texas City, on wheat for export, and on other grains taking the same rates, in carloads, were unreasonable to the extent that they exceeded such line-haul rates exclusive of the trackage charge at Texas City; that Armour company made shipments as described and paid and bore the charges thereon; that on shipments made prior to September 15, 1923, and not barred by the statute of limitations, it has been damaged in the amount of the difference between the charges paid and those which would have accrued at the rates herein found reasonable, and is entitled to reparation with interest. This complainant should comply with Rule V of the Rules of Practice.

Complainants ask that the rates on corn since January 1, 1922, be included in the findings. Throughout the record the rates on wheat are evidenced by complainants as representative of the rates on all kinds of grain. Prior to January 1, 1922, the rates on wheat and corn were the same, but subsequently the rates on corn have been 10 per cent less than those on wheat pursuant to *Rates on Grain, Grain Products, and Hay*, 64 I. C. C. 85; 69 I. C. C. 562; 80 I. C. C. 362. There is no proof that complainants made shipments of corn, and the findings herein are limited to wheat and other grains taking the same rates, as in the *Clay case*.

93 I. C. C.

No. 13919

FLORY MILLING COMPANY v. CENTRAL NEW ENGLAND
RAILWAY COMPANY ET AL.

Submitted November 2, 1923. Decided October 14, 1924

Refusal of defendants to establish joint rates on grain and grain products from the West and South via Bangor, Pa., over through routes described, with milling in transit at that point, found contrary to the public interest and unreasonable. Refusal to establish other routes requested found not unreasonable.

C. R. Hillyer for complainant.

Charles E. Miller, Alex H. Elder, H. L. Walker, and Albert E. Enoch for defendants.

REPORT OF THE COMMISSION

BY THE COMMISSION:

Exceptions to the examiner's proposed report were filed by defendants. We have modified his conclusions.

Complainant, a corporation engaged in milling, mixing, and malting grain and grain products and by-products and manufacturing livestock and poultry foods at Bangor, Pa., alleges by complaint filed June 3, 1922, that the charges exacted on and rules governing the transportation of grain and grain products from various points in the West and South to Bangor for milling, mixing, or malting, and on the manufactured product thence to destinations in trunk-line and New England territories have been and are unreasonable and unduly prejudicial, in violation of sections 1 and 3 of the interstate commerce act. We are asked to prescribe just, reasonable, and nonprejudicial rates, rules, and practices for the future by virtue of our authority under section 15 of the act. A claim for reparation on past shipments was abandoned at the hearing. Rates are stated in cents per 100 pounds, unless otherwise indicated.

This is essentially a proceeding to require of defendants (1) the establishment of through routes via Bangor from the West and South to eastern territory and (2) the granting of milling-in-transit arrangements at that point at joint rates equal to those now applicable over other routes from and to the same districts.

Bangor is situated on the Bangor & Portland branch of the Delaware, Lackawanna & Western, hereinafter called the Lackawanna,

8 miles south of Portland, Pa., near which point this branch joins the main line. It is a main-line point on the Lehigh & New England which operates from Nesquehoning, Pa., through Tamaqua and Portland to junction with New England roads at Campbell Hall, N. Y., 130.5 miles, with branches at Catasauqua and Bethlehem, Pa., and other points. This road would be an intermediate carrier by all the desired routes. As will later appear, milling in transit is already authorized on both of these lines, hence the chief question at issue is the propriety of requiring the establishment of the through routes and joint rates sought.

Complainant's mill has been operated by the present management alone for approximately 40 years. Its capacity was enlarged about three years ago to between 65,000 and 70,000 tons annually. In recent years the animal-food business has undergone radical changes. The output was formerly by-products of flour milling, but it now consists of so-called mixed foods constituting balanced rations. These necessitate the use of such raw materials as corn, rye, wheat, oats, cottonseed meal, oil and alfalfa meals, blackstrap molasses, etc., most of which originate in the West or South.

Transit practice is common in this industry. It is now accorded complainant by the Lackawanna when the inbound and outpound movements are over that road and certain connections forming through routes over which current joint rates from origin or intermediate basing points are applicable. It is granted in a similarly restricted manner by the Erie, New York Central, Lehigh Valley, and Central Railroad of New Jersey to mills on these lines. To destinations on other than the specified roads combination rates apply. This has the effect of confining the market of any particular mill to points on the road on which it is situated and certain stated connections. When the mill is on a short line, such as the Lehigh & New England, the market is necessarily very limited, unless such road maintains through routes and joint rates with its connections, so that millers thereon may reach points on other lines. Hence, the refusal of defendants to enter into through routes and joint rates with the Lehigh & New England and to permit transit at Bangor at such rates is said to limit the scope of complainant's operations. New England, New Jersey, and eastern New York and Pennsylvania, tributary markets, can now be reached by complainant to a limited extent only. Because of their location on other roads which maintain joint rates with more extensive connecting lines in this territory, competitors at such points as Olean, Attica, Binghamton, Deposit, and Waverly, N. Y., and Laurys, Treichler, Wilkes-Barre, and Lancaster, Pa., are said to enjoy a much wider scope of operation under

their transit arrangements. Prior to the enlargement of its mill complainant's production was 5,000 to 6,000 tons per year. Its production in 1921 was approximately 10,000 tons, and in 1922, 14,000 tons. Its failure to approach anywhere near maximum production is partially attributed to the handicap stated. The margin of profit is said to be small and successful operation possible only on a basis of quantity production.

The Lackawanna's rules now provide an out-of-route charge of 1.5 cents per 100 pounds, formerly 3 cents, between Bangor and Portland on shipments destined to points east of Portland on the Lackawanna, Wharton & Northern, Morristown & Erie, Long Island, Lehigh & Hudson River, Central New England, and New York, New Haven & Hartford, and to certain points on other New England carriers. Transit charges of 0.5 cent per 100 pounds apply on shipments from central territory and 1.25 cents per 100 pounds on shipments from Buffalo, N. Y. A back-haul charge of 5.5 cents per 100 pounds from Bangor to Scranton, Pa., is also authorized by the Lackawanna. The out-of-route charge is said to be a severe handicap on complainant's business. No such charge is necessary on shipments destined to points on the Lackawanna and limited territory on certain connections south of Bangor to which joint rates are maintained. This area does not include territory served by the Philadelphia & Reading.

Additional joint rates, with transit arrangements at Bangor, are desired over the following routes:

1. Erie to Goshen, N. Y., thence Lehigh & New England to and from Bangor to connection with the Philadelphia & Reading at Catasauqua, Pa., or with the Central Railroad of New Jersey at Bethlehem, Pa., for southeastern Pennsylvania and southern New Jersey territory.

2. Lackawanna and western connections to Bangor, and outbound over the Lehigh & New England to connection at Catasauqua or at Bethlehem with lines that serve the territory named in route 1.

3. Lehigh Valley and western connections to Lizard Creek Junction, Pa., thence Lehigh & New England to and from Bangor to connection at Campbell Hall, N. Y., with New England lines; also Lackawanna from Bangor to New York points, including Long Island.

4. New York Central to Newberry Junction, Pa., Philadelphia & Reading to Tamaqua, Pa., and Lehigh & New England to Bangor, and the latter and Lackawanna outbound to connections and destinations named in Group 3 routes.

5. Central States Despatch, Baltimore & Ohio to Martinsburg, W. Va., Cumberland Valley and Philadelphia & Reading to Catasauqua, Pa., and Lehigh & New England to Bangor, and the latter and Lackawanna outbound to connections and destinations named in Group 3 routes.

6. Blue Ridge Despatch, Chesapeake & Ohio to Basic, Va., Norfolk & Western to Hagerstown, Md., thence Western Maryland and Philadelphia & Reading to Catasauqua, Pa., and Lehigh & New England to Bangor, and the latter and Lackawanna outbound to connections and destinations named in Group 3 routes.

Cottonseed meal usually moves to Bangor via Memphis, Tenn., and route 6. No joint rates apply over these routes at present. However, joint rates are in effect to destinations on the Lehigh & New England. No back-haul movements are necessary. The Lehigh & New England is agreeable to the desired adjustment on basis of remunerative divisions of joint rates. It already authorizes transit at points on its line. No change in transit charges is asked.

The commodities involved load between 20 and 36 tons per car. Ordinary equipment is used. Terminal service at Bangor is under simple conditions. This point takes the same rates as Philadelphia on traffic from the West. In the absence of joint rates over the above routes, the combination on Bangor applies, which increases the through rate on outgoing products 17.5 cents to Philadelphia. Competitors in the West or at intermediate points, who have transit arrangements on the joint rates, enjoy an advantage over complainant in eastern markets measured by the outbound component of the combination rates borne by the latter at destinations not reached by joint rates applying via the Lackawanna through Portland. At Philadelphia this amounts to \$3.50 per ton, which practically eliminates complainant from this market. The situation is the same at numerous other destinations, including many near-by points 15 to 25 miles from Bangor, where the handicap similarly amounts to the outbound rate to such places. Moreover, the opening up of new routes would enable complainant to avoid the out-of-route charge of 30 cents to certain points on the Lackawanna.

Mills at Treichler, which is situated on the Central Railroad of New Jersey about 10 miles west of Allentown, Pa., and also on the Lehigh Valley, enjoy transit arrangements on through routes and joint rates from origin or basing points via Buffalo over the Lackawanna, Taylor, Pa., and the Central and the Philadelphia & Reading systems; also over the Lehigh Valley, New York Central, and the Erie, and their eastern connections. This is also true of shipments over the Baltimore & Ohio by route 5 to Treichler when destined to points on the New York, New Haven & Hartford, Boston & Maine, Maine Central, and Central New England, via Easton, the Lehigh & Hudson River, and Maybrook. On the latter movement an out-of-route charge of 5 cents per 100 pounds between Allentown and Treichler is assessed. The miller at Treichler can not reach Lackawanna points east of Portland except on combination rates.

Defendants explain that traffic from the West now moves without restriction over the Lackawanna and western connections via Buffalo to Bangor and state that complainant's disadvantage is geographical, due to location on a branch, and beyond our power to remedy. They say that other shippers on the Lackawanna now bear out-of-route charges and that those applicable between Bangor and Portland are on a relatively lower basis than elsewhere on that road. Complainant's difficulty in meeting competition and in obtaining quantity production is said to be due to the fact that it has not yet developed a market for its product and not to any transportation handicap. It is true that Bangor is a branch-line point on the Lackawanna, but it has main-line status on the Lehigh & New England. If complainant can avoid back-haul charges by the use of practicable routes embracing the last-named carrier, it would obviously attain a more favorable position in which to expand its markets.

Defendants maintain that they now have in operation adequate, efficient, and economical through routes between the points of origin and destination involved, that we can require no additional through routes and joint rates unless their establishment is necessary and desirable in the public interest, and that there is an entire lack of proof that such routes and joint rates will be in the interest of the shipping and consuming public. In addition to specific objections offered to the various routes suggested they contend generally that to grant the rates and routes requested would disturb the present adequate routing practices and would require a diversification of routing which would result in inefficiency and waste in operation, thereby injuring rather than benefiting the public. It is true that no producers of the inbound commodities, retailers of complainant's products, or ultimate consumers appeared at the hearing to testify that they would be benefited by the joint rates asked. It may also be true that retailers and consumers encounter no great difficulty in securing an adequate supply of grain products and mixed feeds from mills located on established routes over which joint rates with transit apply. But an individual shipper is entitled to the reasonable use of existing transportation facilities at reasonable rates on his traffic. Further, an individual miller is a shipper and entitled to reasonable rates, rules, and regulations measured in the light of the business and transportation practices in the industry in which he is engaged. Milling in transit of grain, grain products, and commodities entering into the manufacture of mixed feeds at the joint rates in effect to ultimate destination has become such a widely diffused and common practice, due in large extent to the voluntary act of the carriers, that it is undoubtedly true that any manu-

facturer not accorded transit under joint rates is at a substantial disadvantage which will confine his opportunities of sale to limited areas. It is the province of the carriers to conduct commerce in the channels demanded by the shippers. Because of the business and transportation practices prevalent in dealing in grain and grain products, to compete upon an equality complainant requires joint rates with transit at Bangor equal to the rates in effect over existing routes through other milling points. The market for mixed animal feeds is extensive in the territory east of Bangor. These products are usually distributed over large areas, and quantity production is essential to profitable operation. The public interest is not conserved by shutting out, by denial of joint rates, a miller from markets which he can reach by routes not necessitating the performance of a greater total service for him than the service over present routes over which joint rates apply unless some substantial right of the carriers is thereby invaded. On the other hand, we would clearly not be justified in attempting to neutralize the disadvantage of geographical location by requiring wasteful service or additional service without adequate compensation, although the shipper may be in dire need. If the joint rates via Bangor are confined to routes involving a substantial similarity in service to already existing routes with joint rates, and the lawful rights of the carriers are preserved, we are unable to see that the result will be numerous unreasonable requests for extension of transit or that the publication of such joint rates on grain, grain products, and mixed feeds will result in undue multiplication of routes or diversification of traffic.

Defendants further maintain that the establishment of the through routes and joint rates asked would in several instances short-haul carriers which participate in existing routes, in violation of paragraph 4 of section 15 of the act, and that in other instances traffic would be diverted from existing routes without justification and carriers thereby be deprived of traffic which they have long enjoyed. The first objection has no application unless the carrier has originated the traffic or received it from a connection, in which event it should under ordinary circumstances be allowed to transport the freight as far as it can before delivering it to a connecting line. Relative to the second objection, on the other hand, it is equally true that a carrier under usual conditions has no existing right in traffic still in the possession of connecting lines. In *Dean Mill Co. v. M. P. R. R. Co.*, 80 I. C. C. 174, cited in support of the second objection, complainant was seeking transit at Monroe, La., under the joint rates in effect on grain and grain products from points on the Mobile & Ohio between St. Louis, Mo., and Cairo, Ill., to destinations

on the Missouri Pacific in Louisiana. Both the Mobile & Ohio and the Missouri Pacific reach the primary market of St. Louis and also Cairo, and the latter carrier granted transit at Monroe on grain and grain products from all mills on its lines. Complainant maintained a mill at Ava, Ill., a point on the Mobile & Ohio between St. Louis and Cairo, and a corporation largely owned by its president operated a transit house for handling grain and grain products at Monroe. Complainant's request for the additional transit was apparently prompted by its desire to mix and concentrate at Monroe products from its mill at Ava. If the transit asked had been granted the Mobile & Ohio could have diverted additional grain from the Missouri Pacific at the primary market, some of which grain might have originated on its lines west of St. Louis. We dismissed the complaint. The facts upon which such of our conclusions in the present case as are adverse to defendants are based do not present a parallel situation. The specific routes over which joint rates are asked will be considered individually.

Route 1 is impractical because Goshen, N. Y., the junction point of the Erie and the Lehigh & New England named is a New York rate point, while many of the ultimate destinations are in Philadelphia rate territory. The fact that fourth-section violations would be created by joint rates over this route is sufficient to remove it from serious consideration without further comment, and no other route in connection with the Erie is suggested.

The second route asked is over the Lackawanna to Bangor, thence Lehigh & New England to Catasauqua or Bethlehem, Pa., thence the Philadelphia & Reading or the Central Railroad of New Jersey to southeastern Pennsylvania and southern New Jersey destinations. The existing routes are over the Lackawanna and its western connections to Taylor or Rupert, Pa., thence Central Railroad of New Jersey or Philadelphia & Reading, or both. The suggested routes are approximately of the same length as the existing routes; the Lackawanna would receive a longer haul and the same number of carriers would participate as when the Central Railroad of New Jersey and the Philadelphia & Reading haul the traffic from Taylor. The Philadelphia & Reading objects on the ground that its Catasauqua & Fogelsville branch is a single line and already congested. This is not a sufficient reason for denying to complainant the equal use of that branch with other shippers thereover or its equivalent. If defendants for operating reasons prefer to eliminate Catasauqua as a junction point, they can and may utilize the Central Railroad of New Jersey between Bethlehem and Allentown.

Route 3 would short-haul the Lehigh Valley to New England, New York rate points, and Long Island points.

Suggested route 4 would apply over the New York Central to Newberry Junction, Pa., and connections to New England, New York, and Long Island. At present Newberry Junction is not a junction point on traffic at joint rates to New England. The short logical route of the New York Central lines appears to be via West Albany, N. Y., and Springfield, Mass. The New York Central participates in joint rates to New York and Long Island points applying through Newberry Junction, thence Philadelphia & Reading to Haucks, Pa., and the Central Railroad of New Jersey and connections beyond. The suggested route would inject the Lehigh & New England as an additional carrier without compensatory advantage of shortened haul.

The present route to New England over the Central States Despatch is over the Baltimore & Ohio to Martinsburg, W. Va., thence Cumberland Valley and Philadelphia & Reading to Allentown, Pa., Central Railroad of New Jersey to Easton, Pa., Lehigh & Hudson River to Maybrook, N. Y., Central New England and connections to destinations. The present Blue Ridge Despatch to New England is made up of the Chesapeake & Ohio to Basic, Va., Norfolk & Western to Hagerstown, Md., Western Maryland and Philadelphia & Reading to Allentown, Central Railroad of New Jersey to Easton, Lehigh & Hudson River to Maybrook, and Central New England and connections to destinations. Proposed routes 5 and 6 would be modifications of those routes in that the Lehigh & New England would participate from Catasauqua to Campbell Hall, N. Y., in lieu of the Central Railroad of New Jersey and the Lehigh & Hudson River from Allentown to Maybrook. One carrier would thus be eliminated by the routes suggested, and the Lehigh & New England and Lehigh & Hudson River are parallel competing routes of apparently equal potential ability to serve New England. The latter road is 85.8 miles long and parallels the former. If the carriers for operating reasons prefer to inject the Central Railroad of New Jersey between Bethlehem and Allentown, it still would appear that the suggested routes are as advantageous as the existing routes shown to New England.

We find that to the extent indicated joint rates over the routes described are necessary and desirable in the public interest and that the failure and refusal of defendants to publish joint rates on grain and grain products from points in the West and South via Bangor, Pa., with transit at that point over the routes described at the rates and to the destinations indicated is unreasonable and

subjects complainant to the payment of unreasonable rates and charges. Defendants will be expected to publish joint rates (1) over the Delaware, Lackawanna & Western and connections to Bangor, Pa., thence Lehigh & New England to Catasauqua or Bethlehem, Pa., thence Philadelphia & Reading or Central Railroad of New Jersey to destinations in southeastern Pennsylvania and southern New Jersey beyond Catasauqua and Bethlehem not higher than those contemporaneously maintained to these destinations over the routes composed of the Lackawanna to Taylor, Pa., thence Central Railroad of New Jersey or Central Railroad of New Jersey and Philadelphia & Reading, and (2) over the Baltimore & Ohio to Martinsburg, W. Va., the Cumberland Valley and Philadelphia & Reading to Catasauqua, thence Lehigh & New England via Bangor to Campbell Hall, N. Y., thence Central New England and connections and over the Chesapeake & Ohio to Basic, Va., thence Norfolk & Western, Western Maryland, and Philadelphia & Reading to Catasauqua, thence Lehigh & New England through Bangor to Campbell Hall, thence Central New England and connections to destinations in New England beyond Campbell Hall at rates not higher than those contemporaneously maintained over the existing routes in which the Lehigh & Hudson River participates from Easton, Pa., to Maybrook, N. Y., to these destinations. The carriers may, if they wish for operating reasons, eliminate Catasauqua as a junction point if other routes and equal rates are substituted. The failure and refusal to establish joint rates over the other routes described is upon this record found not unreasonable, and complainant has not substantiated its claim of undue prejudice.

No order will be entered at this time, but defendants will be expected to comply with our findings within 90 days from the service of this report, failing which the matter may be again brought to our attention.

CAMPBELL, *Commissioner*, concurring:

The finding of the majority has my approval as far as it goes, but I think the record is entirely adequate to warrant establishment of all of the routes requested by complainant, with the exception of route 1, which would result in unwarranted fourth-section violations.

HALL, *Chairman*, dissenting:

No shippers, other than complainant, appeared in support of the complaint. I am not persuaded by the evidence that the joint rates over the additional through routes required by the majority are necessary in the public interest, a condition precedent to such a

requirement under section 15, paragraph (3), of the interstate commerce act. On the contrary, I am convinced by the evidence that the present joint rates and routes are reasonable and adequate. Transit is an incident of the rate, but joint rates are here treated, in effect, as incidents of transit. The complaint should be dismissed. COMMISSIONER McMANAMY joins in this dissent.

93 I. C. C.

No. 14376¹

SEAMAN PAPER COMPANY v. DIRECTOR GENERAL, AS AGENT, AND MINNESOTA, DAKOTA & WESTERN RAILWAY COMPANY, ET AL.

Submitted September 11, 1924. Decided October 25, 1924

Rates on wrapping paper, in carloads, from International Falls, Minn., to Chicago, Ill., during Federal control found unreasonable. Reparation awarded.

John E. Gavin, W. N. Webb, J. R. Henderson, and Adams, Follansbee, Hawley & Shorey for complainants.

John F. Finerty, Thomas M. Woodward, and M. G. de Quevedo for director general.

REPORT OF THE COMMISSION

DIVISION 2, COMMISSIONERS AITCHISON, ESCH, AND CAMPBELL
AITCHISON, *Commissioner*:

Exceptions were filed by the director general to the proposed report of the examiner. Our conclusions differ somewhat from those he proposed.

These cases involve similar issues, were heard together, and will be disposed of in one report. Complainant in No. 14376 is a corporation dealing in paper at Chicago, Ill. Complainant in No. 14443 is a corporation manufacturing paper at International Falls, Minn. They allege that the rate of 48.5 cents charged on 10 carloads of wrapping paper shipped from International Falls to Chicago between August 30 and October 14, 1918, was unreasonable, unjustly discriminatory, and unduly prejudicial to the extent that it exceeded 20 cents. Complainants ask for reparation only. Rates are stated herein in cents per 100 pounds.

The shipments moved to Duluth, Minn., 176 miles, over the Minnesota, Dakota & Western and the Duluth, Winnipeg & Pacific Railways, which were not under Federal control, and from Duluth to Chicago, 465 miles, over the Chicago, St. Paul, Minneapolis & Omaha and the Chicago & North Western, which were under Federal control. No through rates were in effect on wrapping paper at the time of the movement, and on them was paid the applicable fifth-

¹ This report also includes No. 14443, Minnesota & Ontario Paper Company v. Director General, as Agent, Chicago & North Western Railway Company, et al.

class rate of 26.5 cents to Duluth, plus a 22-cent commodity rate beyond. The record shows no violation of section 2 or damage under section 3 of the interstate commerce act. Discussion will therefore be confined to the reasonableness of the rates charged.

The shipments covered by the complaint in No. 14376 were on September 18 and 23, and October 1, 2, 11, and 14, 1918. Claims arising from these shipments were first presented to us by informal complaint October 1, 1920. Shipments delivered or tendered for delivery prior to October 2, 1918, are barred except as to carriers under Federal control.

Shipments covered by the complaint in No. 14443 were made in August and September, 1918. Claims based thereon were first brought to our attention by informal complaints filed January 19, and February 26, 1921. Apparently none of these shipments were delivered or tendered for delivery within two years of the filing of the informal complaints; therefore claims against defendants not under Federal control are barred.

The 20-cent rate, to the basis of which complainants seek reparation, was a commodity rate on newsprint contemporaneously in effect from International Falls to Chicago. Newsprint rates were subsequently made applicable to wrapping paper, and continued so until the decision in *Minnesota & Ontario Paper Co. v. N. P. Ry. Co.*, 66 I. C. C. 571, hereinafter called the *Paper case*, March 14, 1922. We there found that for the future reasonable rates on wrapping paper should not exceed 110 per cent of the contemporaneous newsprint rates. International Falls is farther distant from Chicago than the Fox River, northern Wisconsin, or Minnesota groups, and generally took a rate 1.5 cents over the Minnesota group basis. In the *Paper case* the rate on newsprint from Fox River group to Chicago was made 17 cents, and the addition of a differential of 10 cents was prescribed for application from International Falls.

The consignor of the shipments in issue did not manufacture wrapping paper until 1918, and then only to keep its plant in operation. The total shipments of wrapping paper from International Falls during Federal control amounted to less than 60 cars, as compared with a movement of newsprint of 13 or 14 cars per day. Wrapping paper is ordinarily slightly more valuable than newsprint.

Complainants rely largely on the proposition that our decision in the *Paper case* compels a finding that more than three years prior to the decision any wrapping-paper rate which exceeded 110 per cent of the contemporaneous newsprint rate was unreasonable. The rate on wrapping paper from International Falls to Chicago

approved in the *Paper case* was 29.5 cents. If modified to reflect the general rate levels prior to the 35 per cent increase of August 26, 1920, the rate of 29.5 cents would have been 22 cents in the period of movement herein.

The complaint assails the through combination rate from International Falls to Chicago. On such shipments in No. 14376 as were delivered or tendered for delivery prior to October 2, 1918, and, so far as appears from the record, on all the shipments in No. 14443, our jurisdiction to award reparation is limited to the charges of the railroads under Federal control. On shipments in No. 14376 delivered or tendered for delivery on or subsequent to October 2, 1918, our jurisdiction extends to the through charges, made up of the charges of both the lines under Federal control and the lines not under Federal control.

We will first consider the Duluth to Chicago factor of the through charge, a 22-cent commodity rate. The ton-mile earnings were 9.5 mills. The director general points to ton-mile earnings of 10.3 mills on the same commodity for a 380-mile haul from Kalamazoo, Mich., to Pittsburgh, Pa., and contrasts the rate assailed with a rate of 22 cents contemporaneously applicable on wrapping paper from the Fox River group to points in Iowa and Minnesota for hauls of from 329 to 385 miles. The earnings under the 22-cent rate from Duluth to Chicago are less than the earnings on iron and steel in the reverse direction. *Official Classification Rates on Paper*, 38 I. C. C. 120, is cited to show that the rates on newsprint are on a low basis because of competition from the East. The rate on wrapping paper from the Minnesota group to Chicago approved in the *Paper case* was 28 cents. Modified to reflect the prevailing rate levels prior to the general increase of August 26, 1920, it would have been 20.5 cents. While Duluth has never been considered to be within the Minnesota group, it is in close proximity thereto, and the distance from Duluth to Chicago is comparable with distances from points in that group to the same destination. The decision in the *Paper case* was in the nature of a general readjustment of the paper rates from producing points in this region to a wide destination territory. Therefore, it does not necessarily follow that rates from a nonproducing point, such as Duluth, must be strictly aligned with those prescribed in the *Paper case* for similar distances. But assuming that the Duluth rate should be measured by the rate on wrapping paper from the Minnesota group approved in the *Paper case*, modified to reflect the then current rate level, we note that the Duluth to Chicago factor of the combination rate was but 1.5 cents higher than the rate prescribed from the Minnesota group producing points. If the through rate was excessive, the unreasonableness

must have been inherent in the factor up to Duluth, a haul of 176 miles for which the fifth-class rate of 26.5 cents was charged, compared with 22 cents for the Duluth to Chicago factor, 465 miles. Clearly, if the latter factor was reasonable the former was unreasonably high. In the *Paper case* we prescribed a rate of 19 cents from the Fox River group to Chicago, 210 miles. Modified to reflect the 1918 rate levels this would become 12 cents. We think this is a just and reasonable basis to be applied as the International Falls-Duluth factor, in constructing the through rate in the manner indicated.

We find that the rate of 48.5 cents charged for the transportation of wrapping paper from International Falls to Chicago was unreasonable to the extent that the factor up to Duluth exceeded 12 cents per 100 pounds; that the complainant in No. 14376 received shipments thereunder subsequent to October 1, 1918, and paid and bore the charges thereon; that it was damaged thereby in the amount the charges paid exceeded those which would have accrued at the rate herein found reasonable; and that it is entitled to reparation in such amount, with interest.

Complainant in No. 14376 should comply with Rule V of the Rules of Practice.

We will enter an order of dismissal in No. 14443.

93 I. C. C.

No. 14832

WESTERN STONEWARE COMPANY ET AL. v. CHICAGO,
BURLINGTON & QUINCY RAILROAD COMPANY ET AL.

Submitted March 28, 1924. Decided October 17, 1924

Readjustment proposed by carriers found to result in rates on stoneware, in carloads, from Monmouth, Macomb, and Whitehall, Ill., to destinations in eastern Montana which will be reasonable and not unduly preferential or prejudicial. Complaint dismissed.

R. J. Dellinger for complainant.

Shaw, Safford, Putnam & Shaw for Red Wing Union Stoneware Company, intervener.

J. N. Davis, T. M. Hanrahan, O. T. Cull, J. G. Morrison, P. B. Beidelman, and *G. A. Hoffelder* for defendants.

REPORT OF THE COMMISSION

DIVISION 3, COMMISSIONERS HALL, CAMPBELL, AND COX

BY DIVISION 3:

Exceptions were filed by complainant to the report proposed by the examiner.

Complainants are the Western Stoneware Company, the Buckeye Pottery Company, and the Whitehall Sewer Pipe & Stoneware Company, corporations manufacturing common stoneware food containers at Monmouth, Macomb, and Whitehall, Ill., respectively. By complaint filed April 26, 1923, they allege that the rates on common stoneware, in carloads, from Monmouth, Macomb, and Whitehall to various destinations in North Dakota and eastern Montana are unreasonable, unjustly discriminatory, and unduly prejudicial to them and unduly preferential of producers and shippers at Red Wing, Minn. We are asked to prescribe just, reasonable, and nondiscriminatory rates for the future. Rates will be stated in cents per 100 pounds.

The complaining points are in western Illinois, and the routes to the territory of destination named in the complaint are via St. Paul, Minn. The distances to St. Paul over the Chicago, Burlington & Quincy Railroad are 394 miles from Monmouth, 425 from Macomb, and 501 from Whitehall. The distance to St. Paul from Monmouth over the Minneapolis & St. Louis is 392 miles. In making comparison with the rates and distances from Red Wing complainants use

an average distance of 440 miles from their three points. Red Wing is about 40 miles southeast of St. Paul on the Chicago Great Western and the Chicago, Milwaukee & St. Paul. The latter road will be referred to as the Milwaukee.

The hearing in this case was prior to the service of our report in *Earthenware or Stoneware from Red Wing*, 81 I. C. C. 64, in which a reduction on earthenware or stoneware from Red Wing to north Pacific coast and intermediate transcontinental territory from the Group E to the Group F basis, or from \$1.35 to \$1.28, was found justified. Red Wing, Monmouth, and Whitehall are in Group E and there had been a substantial parity between them since 1897 to the north Pacific coast territory and since 1906 to points in intermediate territory affected by the reduction. Group E rates have been applicable from Macomb, a Group D point 40 miles east of Group E, since November 30, 1922. The testimony and exhibits in the present case refer to the rate situation prior to the reduction from Red Wing, and, except as otherwise indicated, the following will refer to that situation.

The complaint, in which unreasonableness as well as undue prejudice is alleged, resolved itself into one as to the relationship of the Illinois rates to the Red Wing rates. In their brief complainants ask for a finding that the rates from the Illinois producing points be found "unreasonable in comparison with the rates from Red Wing." Complainants' evidence refers largely to the difference in rates from the Illinois points and from Red Wing and their contention is that to the territory of destination covered by their complaint "the Illinois rates are increased for additional distance in the same amounts as are the Red Wing rates over the same routes, to the same destinations, and under exactly similar circumstances and conditions; the Illinois shipper thereby being deprived of natural advantages which are thus artificially bestowed upon his Red Wing competitors."

From Red Wing to the west the general basis of rates is class B, joint or combination, with the coast rate as maximum. The rates of the Milwaukee are in fact the class B rates unless the coast rates are lower. The rates of the other lines are generally class B or lower, but in a few instances, which are not explained, the rates are slightly higher than class B. From the Illinois points to western trunk-line territory the rates grew out of the so-called Faithorne award in 1907, which fixed the relationship to that territory between Red Wing and the Illinois points.

To St. Paul the local rates are 10.5 cents from Red Wing and 26 cents from the complaining Illinois points. West of St. Paul the difference in rates grades down gradually from 15 cents to 9 or 9.5 cents at New York Mills, Minn., on the Northern Pacific, Melby,

Minn., on the Great Northern, and Big Stone City, S. Dak., on the Milwaukee. Beginning with these points, which are 170, 164, and 192 miles, respectively, from St. Paul, the 9-9.5-cent differential is carried west to the North Dakota-Montana State line on the Northern Pacific and Great Northern and to Mobridge, S. Dak., on the Milwaukee, 455, 456, and 204 miles, respectively. To Montana points on all three lines and to South Dakota points on the Milwaukee west of Mobridge there are no joint rates and charges are based on local or proportional rates to St. Paul and class B rates beyond. On traffic to points on the Milwaukee there is a proportional rate from Red Wing to St. Paul of 8.5 cents, and on traffic to points on the other lines the local rate applies. These combinations are subject to the coast rate as maximum. Immediately west of Mobridge on the Milwaukee and at the North Dakota-Montana line on the other roads the difference in favor of Red Wing jumps to 15 or 15.5 cents. These differences are not exceeded at points on the Northern Pacific or Great Northern and as the maximum or coast rate is reached on traffic from Illinois at points farther east than on traffic from Red Wing, the difference in favor of Red Wing is reduced and then disappears. This difference is reduced to 13.5, to 10.5, and then to 5.5 cents on the Northern Pacific, and to 13.5 and then to 5.5 cents on the Great Northern. The first points on these two lines taking the maximum rate from both Red Wing and Illinois are Muir, Mont., on the Northern Pacific, and Tiber, Mont., on the Great Northern, 1,019 and 973 miles, respectively, from St. Paul. The difference in favor of Red Wing fluctuates up and down from 15.5 to 17.5 cents at stations on the Milwaukee west of Mobridge to and including Musselshell, Mont., 833 miles from St. Paul, and then drops to 0.5 cent at Twodot, Mont., 936 miles from St. Paul. The first point on the Milwaukee taking the maximum rate from Red Wing and the Illinois points is Gold Creek, Mont., 1,172 miles from St. Paul.

In view of the decision in *Earthenware or Stoneware from Red Wing*, *supra*, defendants express a willingness to remove the "hump" in the difference between Red Wing and the Illinois points by reductions from the latter which will result in a maximum difference in eastern Montana of 9 cents.

Complainants go into great detail in explaining the rate relationship which they desire established. Under their scheme the 9-9.5-cent differential at points west of Minnesota would be gradually reduced to an equalization of rates at Glen Ullen, N. Dak., on the Northern Pacific, Stanley, N. Dak., on the Great Northern, and Buffalo Springs, N. Dak., on the Milwaukee, 508, 530, and 551 miles, respectively, from St. Paul. To Glen Ullen the distance from Red Wing

is approximately 548 miles and the present rate of 79 cents yields 28.8 mills per ton-mile. Using the average distance shown by complainants from the Illinois mills to that point, 948 miles, the 79-cent rate suggested to Glen Ullen would yield 16.67 mills. The present Glen Ullen rate from the Illinois points, 88 cents, yields 18.57 mills, more than 1 cent a ton-mile less than the Red Wing rate to the same destination.

To Detroit, Minn., on the Northern Pacific, about 201 miles from St. Paul, the rates are 33.5 cents from Red Wing and 43 cents from the Illinois points, or 23 and 17 cents, respectively, higher than the local rates to St. Paul. To Glen Ullen the rate from Red Wing and the Illinois points are, respectively, 68.5 and 62 cents higher than the local rates to St. Paul. From Red Wing the ton-mile earnings are 27.8 mills to Detroit and 28.8 mills to Glen Ullen; from the Illinois points 13.4 and 18.57 mills, respectively. The reason for this increase in ton-mile earnings from the latter is obvious, for, whereas to St. Paul the ton-mile earnings are 52.5 mills from Red Wing and 11.8 mills from the Illinois points, at Baileys, 44 miles west of St. Paul, the earnings are 47 and 14.4 mills, respectively, although the rate from Red Wing has been increased 10 cents and the rate from the Illinois points 9 cents.

Complainants, it should be noted, do not question the difference in the rates to Minnesota points, but, accepting that as fair to them, ask for a reduction of this difference with increase of distance. Their rate witness made the following statement, which was quoted with approval in brief:

We are not proposing to set the pace, nor the rate of progression, as to either rates or earnings, but are merely taking up the broken threads where the carriers left off, and continuing the gradient. The carriers have voluntarily commenced with lower ton-mile earnings from Illinois than from Red Wing. They have set the rates from both shipping points, and these rates have fixed the earnings. We are merely proposing to continue the gradient where they have left off.

A proposed rate adjustment based on such a theory requires no discussion, especially in view of the fact that we have found justified a difference of 7 cents at Seattle and Spokane, Wash., in favor of Red Wing. The proposed maximum difference in eastern Montana of 9 cents would remove the irregularities in the relationship and would give complainants all the relief to which they are entitled.

We find that the reductions proposed by defendants would result in fair, nondiscriminatory, and nonprejudicial rates. The complaint will be dismissed.

No. 15507

I. V. SUTPHIN COMPANY ET AL. v. SOUTHERN RAILWAY
COMPANY ET AL.

Submitted July 9, 1924. Decided October 17, 1924

Rates on scrap paper, in machine-pressed bales, in carloads, from Atlanta, Inman yards, and Marietta, Ga., to Chattanooga, Tenn., found not unreasonable. Complaint dismissed

Watkins & Asbill for complainants.

Henry Thurtell and *Joseph P. Cook* for defendants.

REPORT OF THE COMMISSION

DIVISION 3, COMMISSIONERS HALL, CAMPBELL, AND COX

BY DIVISION 3:

Exceptions were filed by complainants to the report proposed by the examiner.

Complainants are the I. V. Sutphin Company, a corporation buying and selling scrap paper at Atlanta, Ga., and the Atlanta Paper Company, a corporation manufacturing and selling paper boxes, cartons, bags, and wrapping paper. By complaint filed December 17, 1923, they assail as unreasonable the present rates and those in effect for two years prior to that date on scrap paper, in machine-pressed bales, in carloads, from Atlanta, Inman yards, and Marietta, Ga., to Chattanooga, Tenn. We are asked to prescribe reasonable rates for the future, and to award reparation. Rates are stated in cents per 100 pounds, and, except as otherwise indicated, apply in connection with a carload minimum of 24,000 pounds.

In 1923 about 355 carloads of scrap paper were shipped from Atlanta to Chattanooga, consigned to mills making box board. The record does not show the extent of the movement from Marietta. Atlanta and Marietta are, respectively, 138 and 116 miles from Chattanooga over the short line of the Nashville, Chattanooga & St. Louis. In September, 1919, commodity rates of 16.5 cents from Marietta and 17.5 cents from Atlanta were established. The Marietta rate was increased to 20.5 cents August 26, 1920, and reduced to 18.5 cents July 1, 1922. On the same dates the rates from Atlanta became 22 and 20 cents, respectively. At the request of

Atlanta shippers and a board manufacturer at Chattanooga defendants in 1923 reduced the rate from Marietta to 17 cents and that from Atlanta to 18 cents. These are the present rates.

At Canton, N. C., a local station on the Murphy branch of the Southern, there is a large paper mill for the benefit of which a distance scale of rates on scrap paper was established about 10 years ago from points on the Southern and on other lines. This scale, known as the Canton scale, provides a rate of 14 cents for distances between 100 and 150 miles. Stating that transportation conditions between Atlanta and Chattanooga are much more favorable than those on the lines over which the Canton scale applies, complainants contend that 14 cents would be a maximum reasonable rate from Atlanta and Marietta to Chattanooga. Complainants also call attention to the rate of 14 cents for 123 miles from Atlanta to Gordon, Ga., where there is a paper mill. Other rates referred to by complainants are shown below:

From—	To—	Distance	Rate
		<i>Miles</i>	<i>Cents</i>
Birmingham, Ala.....	Cedartown, Ga.....	107	17. 5
Knoxville, Tenn.....	Chattanooga, Tenn.....	111	17
Columbus, Ga.....	Atlanta, Ga.....	116	17
Hattiesburg, Miss.....	New Orleans, La.....	117	17
Columbus, Ga.....	Gordon, Ga.....	120	18. 5
Augusta, Ga.....	Macon, Ga.....	125	14
Athens, Ga.....	Cedartown, Ga.....	127	17
Meridian, Miss.....	Mobile, Ala.....	135	19
Columbus, Ga.....	Marietta, Ga.....	136	17
Dublin, Ga.....	Atlanta, Ga.....	141	17. 5
Vienna, Ga.....	do.....	143	17. 5
Augusta, Ga.....	Gordon, Ga.....	145	18. 5
Birmingham, Ala.....	Chattanooga, Tenn.....	145	20
Knoxville, Tenn.....	Canton, N. C.....	145	17. 5
Laurel, Miss.....	New Orleans, La.....	146	19
Nashville, Tenn.....	Chattanooga, Tenn.....	151	17

¹ Any-quantity rates.

² Carload minimum 30,000 pounds.

The Georgia Public Service Commission has tentatively approved a scale of rates on waste paper for intrastate application, including among others the following:

120 miles and over 110.....	17 cents.
130 miles and over 120.....	17. 5 cents.
140 miles and over 130.....	18 cents.

This scale apparently is satisfactory to the carriers, who have used it as a guide in establishing the rates here in issue and other interstate rates in the South. The Nashville, Chattanooga & St. Louis publishes a scale of rates to Chattanooga from points on its Atlanta division which differs only slightly from the Georgia commission scale. The scale in effect from stations on the Central of Georgia to Gordon, which is somewhat higher, provides a rate of 20 cents for distances between 125 and 140 miles, but a notable exception from

this scale has been made in the case of the rate from Atlanta to Gordon, previously mentioned.

In *Memphis-Southwestern Investigation*, 77 I. C. C. 473, we prescribed a single-line rate of 18.5 cents on scrap paper for 135 to 140 miles, minimum 30,000 pounds. The charge per minimum car under this rate would be \$55.50, compared with \$43.20 under the present rate and minimum from Atlanta to Chattanooga. Defendants also compare the latter figure with earnings on scrap paper in central territory, where the usual basis of rates is said to be sixth class, minimum 24,000 pounds, and 90 per cent of sixth class, minimum 30,000 pounds. The zone A and zone B sixth-class rates for 135 to 140 miles are 17 and 18.5 cents, respectively, and 90 per cent thereof, 15.5 and 16.5 cents. The earnings under these rates per minimum car would be \$40.80, \$44.40, \$46.50, and \$49.50. Complainants deny that the class basis is universally applied in central territory and instance the following commodity rates:

From—	To—	Distance	Minimum	Rate	90 per cent of sixth class
		<i>Miles</i>	<i>Pounds</i>	<i>Cents</i>	<i>Cents</i>
Rittman, Ohio.....	Cleveland, Ohio.....	106	30,000	11	14.5
Quincy, Ill.....	Alton, Ill.....	123	30,000	10	15.5
St. Louis, Mo.....	Quincy, Ill.....	140	30,000	11	15.5
Galesburg, Ill.....	Chicago, Ill.....	163	30,000	14	16.5
Ironville, Ohio.....	Grand Rapids, Mich.....	165	36,000	16.5	18
Rock Island, Ill.....	Chicago, Ill.....	167	40,000	13	16.5
Hammond, Ind.....	Grand Rapids, Mich.....	184	36,000	18	19

A rate of 18 cents is in effect to Chattanooga from the following stations, all of which are from 130 to 140 miles distant: Bobo, Quebec, Ready, Onward, Toney, Smyrna, Lewisburg, Kimbro, Harvest, Mount View, Sparta, New Market, and Offuts, Tenn., Jacksonville, Anderson, and Wheeler, Ala., and Bowdon Junction and Carrollton, Ga. Defendants call attention to numerous rates to Chattanooga, Macon, Ga., Hartsville, S. C., Gordon, and Atlanta, which are higher than 18 cents for distances of 138 miles or less. They also instance a great number of rates on scrap paper in trunk-line territory which for similar distances yield higher earnings per car-mile and per ton-mile than those under the rates from Atlanta to Chattanooga. The car-mile earnings on scrap iron, bar iron, pulp board, lumber, kainit, manure salts, broken glass, cinders, clay, sand, fertilizer, and ground limestone, moving between Atlanta and Chattanooga, based on what are said to be average loadings, are shown to exceed those on scrap paper at the current rate. Defendants say that the Canton scale was originally established to

93 I. C. C.

aid the Canton mill in competing with northern mills, has been found unremunerative, and that they intend to increase it.

The rates on which complainants chiefly rely by way of comparison appear to be below the general level of rates on scrap paper in the South, and the record as a whole does not indicate that the rates assailed are in excess of a reasonable maximum. Complainants' evidence relates solely to current rates, but it appears from defendants' exhibits that the rates previously in effect were not out of line with other contemporaneous rates for comparable distances.

We find that the rates assailed were not and are not unreasonable. The complaint will be dismissed.

93 I. C. C.

No. 15502¹SHANARD ELEVATOR COMPANY v. MINNEAPOLIS
EASTERN RAILWAY COMPANY ET AL.

Submitted July 17, 1924. Decided October 17, 1924

Failure of line-haul carriers to absorb switching charges at Minneapolis, Minn., of the Minneapolis Eastern and the Minneapolis Western on grain, in carloads, from five stations in South Dakota found not to have resulted in the payment by complainants of unreasonable transportation charges. No damage shown to have resulted from alleged unjust discrimination and undue prejudice. Complaints dismissed.

T. H. Trelford and B. M. Hawley for complainants.

F. W. Root, J. N. Davis, T. M. Hanrahan, Richard L. Kennedy, Fred G. Wright, and R. J. Hagman for defendants.

REPORT OF THE COMMISSION

DIVISION 3, COMMISSIONERS HALL, CAMPBELL, AND COX

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainants are corporations dealing in grain at stations in South Dakota. By complaints informally presented on December 13, 1922, and filed on December 4, 1923, they allege that the failure of defendants to absorb switching charges of the Minneapolis Eastern and the Minneapolis Western on grain, in carloads, shipped in 1920 and 1921 from certain points in South Dakota to industries on the rails of the Minneapolis Eastern and the Minneapolis Western, and also to industries on other lines reached in connection with the Minneapolis Eastern and the Minneapolis Western, resulted in collection of transportation charges which were unreasonable, unjustly discriminatory, unduly prejudicial, and without tariff authority in violation of sections 1, 2, 3, and 6 of the interstate commerce act. The prayer is for reparation only. Charges will be stated in amounts per car.

The points of origin are Emery, Alexandria, Freeman, Claremont, and Humboldt, S. Dak., the first three being local stations on

¹ This report embraces also No. 15502 (Sub-No. 1), *Equity Union Elevator Company v. Minneapolis Western Railway Company et al.*, and No. 15502 (Sub-No. 2), *Farmers Elevator Company v. Minneapolis Eastern Railway Company et al.*

the Chicago, Milwaukee & St. Paul, referred to herein as the Milwaukee, and the last two local stations, respectively, on the Great Northern and the Chicago, St. Paul, Minneapolis & Omaha, the latter referred to herein as the Omaha.

Complainants' case is grounded primarily on *Chicago, M. & St. P. Ry. v. Minn. Civic Assn.*, 247 U. S. 490, wherein it was held that the Minneapolis Eastern, referred to herein as the Eastern, a terminal line, the capital stock of which was owned jointly by the Milwaukee and the Omaha, was the completely controlled agency of the owning companies, and that the fact that the legal title to certain terminal or spur delivery tracks was in the Eastern could not "become the warrant for permitting a charge upon shippers greater than they would be required to pay if the title were in the owning companies." The present record contains no specific evidence relating to the status of or the situation existing on the Minneapolis Western, but that carrier is owned and controlled by the Great Northern. *Flushing Farmers Elevator Co. v. Director General*, 87 I. C. C. 9, 10.

As the result of the proceedings culminating in the decree in *Chicago, M. & St. P. Ry. v. Minn. Civic Assn.*, *supra*, the switching charge of the Eastern was absorbed by the Milwaukee and the Omaha on intrastate traffic on which those carriers received a line haul. This charge was \$1.50 until August 26, 1920, when it was increased to \$2. But on interstate shipments of grain this charge of the Eastern was collected, in addition to the line-haul rate until December 16, 1922, when the Omaha and the Milwaukee provided for absorption thereof. This placed intrastate and interstate shipments of grain on the same basis with respect to absorption of the charge of the Eastern. The present case represents an effort to obtain reparation on shipments which moved prior to the effective date of the absorption rule. Complainants urge that there was no circumstance of carriage justifying a charge on interstate shipments required to be paid by the shipper, while a similar charge on intrastate shipments was absorbed. They refer to certain absorption practices of the Milwaukee at Omaha, Nebr., Kansas City, Mo., and Superior, Wis., but the circumstances and conditions obtaining at those points are not shown to be similar to those at Minneapolis, particularly in regard to traffic handled by or in connection with the Eastern.

Defendants point out that the decision of the Supreme Court in *Chicago, M. & St. P. Ry. v. Minn. Civic Assn.*, *supra*, was based upon what was considered a discrimination created by the fact that shippers located on the rails of the Eastern were charged for a terminal service while those on the rails of the owning companies were not charged for a like service. As tending to indicate that the charges assessed were not unreasonable, defendants show that they

were the same as applied generally to industries on the Eastern on grain originating at points on lines other than the Milwaukee and the Omaha, and that, so far as the Eastern is concerned, the service was the same irrespective of whether the traffic originated on the Milwaukee or Omaha or on other lines.

The record does not establish that the switching charge assailed was unreasonable *per se* or that collection thereof in addition to the line-haul rate resulted in the exaction of unreasonable charges for the entire transportation furnished.

We find that the charges assailed were not unreasonable. The undue prejudice and unjust discrimination alleged to have existed has been removed and is not shown to have resulted in damage to complainants, the record affording no basis for an award of reparation under sections 2 or 3. The violation of section 6 alleged in the complaint was disposed of adversely to complainants in *Flushing Farmers Elevator Co. v. Director General, supra*. The complaints will be dismissed.

93 I. C. C.

No. 14873

W. P. FULLER & COMPANY *v.* SOUTHERN PACIFIC COMPANY

Submitted June 20, 1924. Decided October 21, 1924

Rates charged on 31 cars of imported linseed oil, in tank cars, from San Francisco, Calif., to Los Angeles, Calif., from May 15 to December 2, 1922, found unreasonable, but not unduly prejudicial. Reparation awarded.

N. B. Wagner for complainant.

Fred H. Wood, James R. Bell, Elmer Westlake, James E. Lyons, F. W. Milke, and G. H. Muckley for defendant.

REPORT OF THE COMMISSION

DIVISION 2, COMMISSIONERS POTTER, ESCH, AND CAMPBELL

BY DIVISION 2:

This case was presented under the shortened procedure. Exceptions were filed by defendant to the report proposed by the examiner and the case was argued orally.

Complainant, a corporation, manufactures paints at San Francisco, Calif. By complaint filed April 26, 1923, it alleges that the rates charged for the transportation of 31 tank cars of imported linseed oil shipped from San Francisco to Los Angeles, Calif., during the period from May 15, 1922, to December 2, 1922, were unjust, unreasonable, unduly prejudicial, and inapplicable. We are asked to award reparation. Rates are stated in amounts per 100 pounds.

Fifth-class rates of 43 cents prior to July 1, 1922, and 38.5 cents thereafter were charged, and reparation is sought to the basis of rates of 35 cents prior to July 1, 1922, and 31.5 cents after that date.

Contemporaneously, there were published rates of 35 cents prior to July 1, 1922, and 31.5 cents subsequent thereto on linseed oil, in packages, from San Francisco to Los Angeles. Effective on July 25, 1922, section 3 (D) of rule 5 of consolidated freight classification No. 2 was published and reads as follows:

When articles have been accepted and come into the carriers' possession to be transported and are in containers of a kind, the use of which is not specifically provided in the description for such articles, the rating on the article in such unauthorized container will be based on the ratings on the same article in such other forms of package that have been authorized for such

articles, as follows, but this rule must not be used as a basis for quoting rates in advance of shipment: * * *

In the same item it is provided that when articles other than dry or solid are shipped in tank cars, the ratings to apply thereon shall be the same as those named on the same articles in bulk in barrels.

Complainant contends that as the tariff naming the commodity rates on linseed oil, in packages, is governed by consolidated classification No. 2, the class rates on shipments transported on and after July 25, 1922, the effective date of the above provision, were inapplicable. The above rule states that when a particular kind of container is not specifically provided for in the description of the article to be transported, the rating on the article in the unauthorized container will be based upon the rating of the same article in other authorized containers. A specific rating on linseed oil, in tank cars, was in effect and, therefore, the above provision was not applicable to the shipments in question.

Complainant shows that in addition to the lower commodity rates on linseed oil in packages, defendant also published commodity rates of 39.5 cents prior to July 1, 1922, and 35.5 cents thereafter on linseed oil in tank cars from Portland, Oreg., to San Francisco and also commodity rates on cottonseed and coconut oils in tank cars between San Francisco and Los Angeles, which were the same in amount as the rates on linseed oil in packages.

Defendant stated that the class rates from San Francisco to Los Angeles are low because of active water competition between rail carriers and steamship lines serving northern and southern California. In support of that contention it cites the fact that the rates from San Francisco to points intermediate to Los Angeles are higher than the rates to Los Angeles and that authority to depart from long-and-short-haul requirements has been granted by the California commission. That matter is also before us in fourth-section orders Nos. 1305 et seq., *Pacific Fourth Section Applications*. It was also asserted that the commodity rate on linseed oil, in packages, was a water-compelled rate because of active competition from steamship lines serving San Francisco and southern California points and that it did not have intermediate application. It was explained that defendant does not encounter competition from water carriers in the transportation of linseed oil, in tank cars, because of the absence of facilities on the part of the steamship lines to transport such shipments and the trouble and expense of handling tank cars. Bulk shipments are handled by water carriers in barrels.

No explanation was given of the establishment of the rate on linseed oil, in tank cars, from Portland to San Francisco, but de-

defendant stated that during 1922 there was no movement between those points. Complainant asserted that within the past six months it has received at San Francisco linseed oil, in tank cars, from Portland and that it is contracting for future shipments from that point. With reference to the rate on cottonseed and coconut oils between San Francisco and Los Angeles, defendant stated that the rate applied on intrastate traffic only and was established to permit shippers at Los Angeles, a large milling point for the production of cottonseed oil, to compete with oil imported at San Francisco. The shippers at Los Angeles receive their raw products from the Imperial Valley and cotton fields in other sections of California.

Defendant compared the rates charged with rates on corn cooking and cottonseed oils, raisin-seed oil, tar oil, sulphuric acid, asphaltum, and crude petroleum oil. No similarity between the commodities used in the comparison was shown and earnings were computed on the basis of average weights, which showed a wide variation, and on distances much shorter than the distance from San Francisco to Los Angeles.

The fifth-class rates charged yielded car-mile earnings of 59.7 cents prior to July 1, 1922, and 53.4 cents thereafter, based on the average loading of the shipments of approximately 32.5 tons and the distance of 468 miles. The rates to the basis of which reparation is sought would have yielded car-mile earnings of 48.6 cents prior to July 1, 1922, and 43.7 cents thereafter.

No evidence of undue prejudice was submitted.

We find that the rates charged for the transportation of 31 cars of linseed oil, in tank cars, from San Francisco to Los Angeles, Calif., during the period from May 15, 1922, to December 2, 1922, were unreasonable to the extent that they exceeded rates of 35 cents prior to July 1, 1922, and 31.5 cents thereafter; that complainant made the shipments as described, and paid and bore the charges thereon; that it has been damaged in the amount of the difference between the charges paid and those which would have accrued at the rates herein found reasonable; and that it is entitled to reparation, with interest. Complainant should comply with Rule V of the Rules of Practice.

No. 14172

HAWKEYE FUEL COMPANY ET AL. v. SPOKANE &
EASTERN RAILWAY & POWER COMPANY ET AL.

Submitted September 26, 1923. Decided October 22, 1924

Rate on fuel wood, in carloads, from certain Idaho points to Spokane, Wash., found not unreasonable. Complaint dismissed.

R. S. Brown and O. C. Green for complainants.

F. D. Allen, Thomas Balmer, and B. H. Kizer for defendants.

REPORT OF THE COMMISSION

DIVISION 3, COMMISSIONERS HALL, CAMPBELL, AND COX

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiners.

Complainants are corporations engaged in the retail fuel business at Spokane, Wash. By complaint filed August 24, 1922, as amended, they allege that the rate charged on nine carloads of fuel wood shipped between August 26, 1920, and April 29, 1921, from Atlas, Idaho, on the Spokane & Eastern Railway & Power Company line and from Garwood, Gibbons, and Fox Spur, Idaho, on the Spokane International, to Spokane was unjust and unreasonable to the extent that it exceeded the rates found reasonable for corresponding distances in *Wood Rates between North Pacific Coast Points*, 61 I. C. C. 159. Rates will be stated in amounts per cord of 128 cubic feet.

A complaint similarly based, seeking reparation on intrastate shipments of fuel wood, was filed with the Department of Public Works of Washington, and at its suggestion we held a joint hearing with that body, at which evidence was adduced concerning both State and interstate traffic. This report deals only with the interstate rates under attack in the complaint filed with us.

Fuel wood is a low-grade commodity and can be handled in equipment not suitable for other commodities. Claims for loss and damage are infrequent. Its free movement promotes the clearing of land and development of the country.

For some years prior to April 20, 1921, three scales of rates were applicable to fuel wood and other kinds of wood in the Northwest.

These were the so-called western scale applying intrastate in western Washington, a scale initiated by the Director General of Railroads, and increased 25 per cent, applying intrastate in Oregon, and the so-called eastern scale applying interstate in Oregon, Idaho, and eastern Washington, and intrastate (1) in eastern Washington, (2) between eastern and western Washington, and (3) in Idaho between points on the Northern Pacific and points on the Chicago, Milwaukee & St. Paul. Effective March 31, 1921, the Public Service Commission of Oregon prescribed a new scale of rates for application between points in that State. A table of rates for representative distances under each of these scales appears in *Wood Rates between North Pacific Coast Points, supra*.

In that case it appeared that no differences in transportation conditions warranted the differences in the then existing rates, and that in order to "eliminate discriminations and inequalities" a reasonable and nondiscriminatory basis of rates for general application throughout these northwestern States was desirable. We accordingly prescribed a distance scale of rates, hereinafter referred to as the uniform scale, which scale was agreeable to the Washington and Oregon commissions, for interstate application on lines therein respondent, among which were defendants herein, in and between the States of Washington, Oregon, and Idaho. The uniform scale is lower than the eastern scale, but generally higher than the Oregon intrastate scale initiated by the director general, plus 25 per cent; higher than the scale prescribed by the Oregon commission; and materially higher than the western scale. Certain interstate commodity rates were in effect in the territory east of the Cascade Mountains which were materially lower than the eastern scale and which were increased under the uniform scale. The latter scale became effective throughout this territory, both interstate and intrastate, on April 20, 1921.

The following table compares the rate charged and the earnings per car thereunder with the rates prescribed by us for the distances shown and the earnings thereunder. The earnings are based on 18.5 cords per car, the average loading of 443 cars moved by the Spokane International during 1920.

From—	Distance	Rate charged	Earnings per car	Rate prescribed	Earnings per car
	<i>Miles</i>				
Atlas, Idaho.....	20	\$1.565	\$28.95	\$1.35	\$24.98
Garwood, Idaho.....	33.7	1.565	28.95	1.45	26.83
Fox Spur, Idaho.....	33.9	1.565	28.95	1.45	26.83
Gibbons, Idaho.....	44.9	1.565	28.95	1.55	28.68

Complainants compare the earnings per car under the rate charged with lower earnings per car under contemporaneous intrastate and interstate rates for similar distances in eastern and western Washington and in Oregon. These rates were before us in the case cited. Similar comparisons are made with lower earnings per car under rates on hay, ice, sand and gravel, and logs, but the volume of movement of any of these commodities is not shown. Complainants compare the average cost per car-mile of 34.86 cents for all traffic on the Spokane International during the year 1920 with the revenues per car-mile of 85.9 and 64.5 cents on fuel wood for the respective hauls from Garwood and Gibbons to Spokane. This comparison is of little or no probative force, for it assumes that the revenue per car-mile of a negligible portion of this defendant's traffic should be the same as that of its traffic as a whole. The \$1.565 rate applied also from farther distant points. From Sand Point, Idaho, 90 miles, for example, the earnings under it would have been 32.2 cents per car-mile.

Defendants contend that the rate charged on complainants' shipments was not unreasonable. They compare it with generally higher rates applying in this territory on brick, sand and gravel, and lumber. They point out that these shipments moved only for short distances and that for the longer, as well as for some of the shorter distances, the rates under the uniform scale if they had been in effect during the period of the complaint would have produced greater earnings than the rate assailed. The principal wood movement on the Spokane International is from points more distant than the points of origin from which complainants' shipments moved, the most distant being Sand Point, from which, as stated, the rate at the time of movement was \$1.565 and that under the uniform scale \$1.95. It is shown by this defendant that if the rates prescribed by us had been in effect during the period of the complaint from all points on its line from which complainants made shipments during that period, one complainant would have been required to pay \$4.74 and another \$13.41 more than they paid, and the third would have paid only 19 cents less than it did. The situation on the Spokane & Eastern Railway & Power lines, the other defendant herein, is shown to be similar to that on the Spokane International. Defendants urge that it would be unfair to them to permit these complainants to have reparation from points from which the rate was reduced under the uniform scale and leave them without redress on shipments from the points from which the rate was increased.

Neither the voluntary nor compulsory reduction of a rate by a carrier necessarily entitles shippers under the unreduced rate to reparation. We have long adhered to the policy that in the public

interest reparation should be denied when rates reduced by our orders have been in effect for long periods and when those orders, as in the case cited, required readjustment of rates throughout an extensive territory and affected shippers at many points. *Inland Seed Co. v. O.-W. R. R. & N. Co.*, 40 I. C. C. 517; *Holmes & Hallowell Co. v. G. N. Ry. Co.*, 77 I. C. C. 683.

We find that the rate assailed was not unreasonable. The complaint will be dismissed.

93 I. C. C.

No. 14874

NEWS-CAPITAL COMPANY v. MISSOURI, KANSAS &
TEXAS RAILWAY COMPANY ET AL.

Submitted September 8, 1924. Decided October 21, 1924

Rates on newsprint paper, in rolls and bundles, in carloads, from Port Edwards and Ladysmith, Wis., International Falls, Minn., and Alexandria, Ind., to McAlester, Okla., found unreasonable. Reparation awarded.

H. G. Struble for complainant.

Wallace T. Hughes for defendants.

REPORT OF THE COMMISSION

DIVISION 4, COMMISSIONERS MEYER, EASTMAN, AND POTTER

BY DIVISION 4:

This case was presented under the shortened procedure. No exceptions were filed to the report proposed by the examiner.

Complainant, a corporation publishing daily and weekly newspapers at McAlester, Okla., alleges by complaint filed April 27, 1923, that the rates charged on seven carloads of newsprint paper, in rolls and bundles, shipped from Port Edwards and Ladysmith, Wis., International Falls, Minn., and Alexandria, Ind., to McAlester between May 12, 1920, and March 24, 1922, were unjust, unreasonable, and unduly prejudicial to complainant and preferential of publishers at Muskogee, Okla. We are asked to prescribe just and reasonable rates for the future and to award reparation. Rates for the future from and to the points named were established as the result of *Minnesota & Ontario Paper Co. v. N. P. Ry. Co.*, 66 I. C. C. 571, so that the only matter to be considered is the claim for reparation. An informal complaint covering the shipments was filed April 25, 1922. Rates will be stated in cents per 100 pounds.

McAlester is 62 miles south of Muskogee on the Missouri, Kansas & Texas and the Chicago, Rock Island & Pacific. The shipments averaged approximately 47,000 pounds and moved over the lines of the defendants, one each from Port Edwards, Ladysmith, and Alexandria, and four from International Falls. The applicable rates were 56.5, 76.5, 89, and 78.5 cents, respectively. Overcharges were collected on certain of the shipments.

In support of its claim for reparation complainant cites, in addition to the case referred to above, *Phoenix Printing Co. v. M., K. &*

T. Ry. Co., 31 I. C. C. 289, and *Adleta Paper Co. v. C. & N. W. Ry. Co.*, 31 I. C. C. 347, decided in 1914, in which we prescribed rates of 34 cents on newsprint and wrapping paper from certain Wisconsin mills to Muskogee, based upon the same rate per ton-mile as to Joplin, Mo., and *Muskogee Wholesale Grocery Co. v. M., K. & T. Ry. Co.*, 57 I. C. C. 125, in which a rate of 52 cents charged on shipments of wrapping paper in 1912, 1913, and 1914, from Neenah, Appleton, and Menasha, Wis., to McAlester was found unreasonable to the extent it exceeded 37 cents.

In the *Minnesota & Ontario Paper Co. case, supra*, we prescribed rates on newsprint paper from points in Wisconsin, Minnesota, and Michigan, including Port Edwards, Ladysmith, and International Falls, to destinations in the West, Southwest, and Mississippi Valley. We also prescribed rates from Chicago, Ill., and St. Louis, Mo., to Oklahoma City and Okmulgee, Okla., and stated that rates from Alexandria and other points which base on Chicago or St. Louis should be correspondingly revised. The following table shows the rates applicable on the shipments, the present rates, and the rates to the bases of which reparation is sought. The rate sought on the Port Edwards shipment was arrived at by adding to the present rate the reduction of July 1, 1922, and deducting from the rate thus obtained the increase of August 26, 1920. As the shipments from Ladysmith, International Falls, and Alexandria moved subsequent to August 26, 1920, the rates sought represent the present rates plus the July 1, 1922, reduction. The distances shown are taken from exhibits of record.

To McAlester from—	Distance	Applicable rate	Present rate	Rate sought
	<i>Miles</i>	<i>Cents</i>	<i>Cents</i>	<i>Cents</i>
Port Edwards.....	893	56.5	56	46
Ladysmith.....	932	76.5	57.5	64
Alexandria.....	900	89	65	72
International Falls.....	1,119	78.5	58.5	65

Defendants urge that the subsequent reduction of a rate, either by voluntary action of the carrier or as the result of our order, does not in itself justify an award of reparation. We have in several cases awarded reparation on shipments of paper to the Southwest on the bases prescribed in the *Minnesota & Ontario Paper Co. case*.

The record does not afford a basis for a finding of undue prejudice. We find that the applicable rates were unreasonable to the extent they exceeded 46, 64, 65, and 72 cents, on the shipments from Port Edwards, Ladysmith, International Falls, and Alexandria, respectively. We further find that complainant made the shipments as

described and paid and bore the charges thereon; that it was damaged thereby in the amount of the difference between the charges paid and those which would have accrued at the rates herein found reasonable; and that it is entitled to reparation, with interest. Complainant should comply with Rule V of the Rules of Practice.

No. 14989

NEBRASKA CEMENT COMPANY v. ATCHISON, TOPEKA
& SANTA FE RAILWAY COMPANY ET AL.

Submitted August 18, 1924. Decided October 25, 1924

Prayer for an order requiring the construction and operation of an interchange track between the intersecting lines of the Atchison, Topeka & Santa Fe and the Chicago, Rock Island & Pacific Railways at Courtland, Kans., denied.

Benedict & Phelps and *E. W. Martindell* for complainant.

R. S. Outlaw and *Wallace T. Hughes* for defendants.

E. B. Albaugh for Concordia Chamber of Commerce, intervener.

REPORT OF THE COMMISSION

DIVISION 4. COMMISSIONERS MEYER, EASTMAN, AND POTTER

MEYER, *Commissioner*:

No exceptions were filed to the report proposed by the examiner.

The complainant corporation, with principal office at Denver, Colo., operates a cement plant at Superior, Nebr., on the line of the Chicago, Burlington & Quincy. The Atchison, Topeka & Santa Fe also serves Superior and absorbs switching charges of the Burlington under joint rates. Superior is the northern terminus of the branch line of the Santa Fe extending north from Strong City, Kans., the junction point with its main line. At Courtland, Kans., 20 miles south of Superior, this branch line crosses the main line of the Chicago, Rock Island & Pacific, extending from the Missouri River to Denver.

There are no facilities for the interchange of traffic between the Santa Fe and the Rock Island at Courtland. The result is that, in order to reach destinations on the Rock Island, shipments from Superior must move west and south over the Burlington to a connection with the Rock Island at Norton, Kans., 105 miles from Superior and 113 miles from Courtland; or east over the Burlington

to Endicott, Nebr., 76 miles, and north over the St. Joseph & Grand Island to the Rock Island at Fairbury, Nebr., 5 miles; or southeast over the Santa Fe to Concordia, Kans., 43 miles, and east over the Union Pacific to the Rock Island at Clifton, Kans., 22 miles. The distances over these routes are greater to many Rock Island destinations than through Courtland. The rates on cement from Superior to Rock Island points are distance rates prescribed by us. The complainant seeks an order for the construction of an interchange track between the Santa Fe and the Rock Island at Courtland, in order to reduce the mileage and therefore the rate, from Superior to Rock Island points, but more particularly in order to expedite delivery, complainant stating that it has lost business to rival plants which can make more expeditious delivery than it can.

The complaint shows that to 16 stations between Courtland and Norton the short-line distance via Courtland ranges from 25 to 122 miles and via Norton from 104 to 212 miles. To Formoso, the first station west of Courtland, the distance via Courtland is shown as 25 miles, and via Norton 212 miles; to Athol, about midway of Courtland and Norton, 78 miles via Courtland and 160 miles via Norton; and to Almena, 11 miles east of Norton, 122 miles via Courtland and 115 miles via Norton. To points west of Norton the distance would be less through Norton than through Courtland. Similar differences between the routes via Courtland and Fairbury, and between the routes via Courtland and Clifton, are shown by exhibits of record. The difference in rates in favor of the Courtland route ranges from 0.5 cent to 4 cents per 100 pounds. No definite evidence was introduced as to the probable difference in the time over the route sought and over the present route; nor with respect to the time consumed in shipments from competing points of production to which complainant is alleged to have lost business.

The Concordia, Kans., Chamber of Commerce intervened in behalf of the complaint. Its present route to Rock Island destinations over the Union Pacific through Clifton is about 45 miles longer to points west of Courtland than over the Santa Fe through Courtland.

The complaint is brought under paragraph 9 of section 1 of the interstate commerce act, which requires the carriers to provide a switch connection between a lateral, branch line of railroad, or private sidetrack, and a common carrier, upon application of the lateral, branch line of railroad, or of a shipper tendering interstate traffic for transportation, when the connection is reasonably practicable, can be put in with safety, and will furnish sufficient business to justify the construction and maintenance of the connection. At the hearing the complainant, with the consent of the defendants, amended its complaint to invoke the provisions of paragraph 3 of section 3 of the act, which prohibits discriminations as between car-

riers in the interchange of traffic. No violation of the latter section has been shown.

The complainant states that it shipped to Rock Island destinations 147 cars in 1921, 162 in 1922, and 108 in 1923; also 58 cars to Iowa and Missouri during the first eight months of 1923 that could have been routed through Courtland; and that of the 147 cars in 1921 forty-seven moved over routes longer than that through Courtland. The defendants state that of the 147 cars in 1921 fifty-five went to destinations that would not be affected by the Courtland connection, which is true also of 115 of the 162 cars shipped in 1922. It is stated that the Concordia Milling Company shipped 30 cars in 1921, 23 in 1922, and 16 during the first nine months of 1923 to Rock Island points west of Courtland. Letters from Concordia shippers as to the probable amount of their traffic through Courtland were introduced in evidence. None of these shippers appeared at the hearing.

The defendants have not urged that the connection sought is not reasonably practicable nor that it could not be put in with safety. Their objection is that the volume of traffic through Courtland is not sufficient to justify the order prayed. They estimate the cost of construction of the desired interchange track, of a required length of 980 feet, at \$5,518.17, the maintenance cost at \$300 a year, and the interest on the original cost at \$350 a year, a total expense which they urge is not warranted by the probable volume of tonnage through Courtland to destinations which would be reached over shorter mileages through Courtland than through other junctions.

Without here determining whether this is a lateral, branch line of railway contemplated by the provisions of the act, a question not raised by defendants, we find that the record fails to show that there would be sufficient traffic over the connection sought to justify the construction and maintenance thereof.

The complaint will be dismissed.

93 I. C. C.

No. 14983

AMERICAN ASSOCIATION OF NURSERYMEN *v.* AMERICAN RAILWAY EXPRESS COMPANY

Submitted June 28, 1924. Decided October 22, 1924

First-class express rating and rates on trees not otherwise specified, and shrubs and branches thereof, found not unreasonable or unduly prejudicial. Complaint dismissed.

John Andrew Ronan for complainant.

A. M. Hartung for defendant.

REPORT OF THE COMMISSION

DIVISION 3, COMMISSIONERS HALL, LEWIS, AND McMANAMY

By DIVISION 3:

Exceptions were filed to the report proposed by the examiner and the case was orally argued.

Complainant, a corporation promoting the interests of nurserymen and producing and distributing nursery stock and other products of the soil, alleges that the first-class rating and rates on trees not otherwise specified, and shrubs and branches thereof, for interstate transportation by express were and are unreasonable and unduly prejudicial. We are asked to prescribe reasonable and nonprejudicial rating and rates for the future. The complaint includes also a prayer for reparation which was not pressed at the hearing.

In the official express classification trees not otherwise specified, and shrubs and branches thereof, boxed, crated, or strawed and baled, are rated first class. For present purposes these articles will be included in the broad term of nursery stock. These articles shipped under first-class rating are known as dormant in contradistinction to growing trees or shrubs, the latter being rated first class in pots or tubs, plant and receptacle crated, and double first class in pots or tubs, not crated. Growing trees and shrubs are not here in issue. In order to be shipped in a dormant state trees are taken in the fall of the year when the sap is down and, after being packed in wet moss and excelsior or shavings, are placed in cold storage where they are kept in anticipation of subsequent shipment.

In the revision following *In Re Express Rates, Practices, Accounts, and Revenues*, 24 I. C. C. 380, 433, 28 I. C. C. 131, nursery

93. I. C. C.

stock was rated second class. Formerly, and for many years, certain articles of nursery stock were accorded "general special" rates. Concerning the basic theory of express classifications we said in that case:

There must be a new classification of traffic in which the standard or first-class rate shall be that on merchandise, and to which there shall be one great class of exceptions—a second class as it were—consisting of articles of food and drink now carried under the meaningless term of 'general specials.' The rate for this latter class should bear a relation in percentage to the former. Our conclusion is that 75 per cent of merchandise would yield a fair and reasonable rate.

Believing that the second-class rating on this traffic was not in accord with our findings in that case, defendant after some delay sought to increase the rating to first class. This proposal was approved in *Express Classification, 1920*, 59 I. C. C. 265, 280, wherein we said:

TREES N. O. S. AND SHRUBS AND BRANCHES THEREOF.

On these articles, now rated second class, boxed, crated, or strawed and baled, it is proposed to apply first-class rates. Besides the point that second-class rates more appropriately embrace foodstuffs and drink, respondent shows that nursery stock is shipped in packages of irregular shape and often of great bulk and weight, in extreme instances having run as high as 1,000 pounds and as long as 25 or 30 feet. Shipments are practically confined to the spring and fall months, frequently going to small points at which respondent has only one man to deliver them. During the season it is often necessary to employ additional labor to load the cars. One of the large nurseries, in Illinois, ships its trees in boxes, 8 to 10 feet long, 2.5 to 3 feet square, the packages weighing from 200 to 300 pounds, and the more difficult to handle because heavier at one end than at the other. A representative of the American Association of Nurserymen cites shipments from a Louisiana nursery in bales ranging from 20 to 100 pounds, and opposes an increased rating in connection with increased rates as tending to discourage the movement of the traffic. On the other hand, certain Texas nurseries ship in bales weighing from 400 to 600 pounds. A representative of the Florida Railroad Commission points out that berry and vegetable plants take second class, and urges that there is no sound distinction between them and nursery stock. His contention that nursery stock also produces food would have no application to shade and ornamental trees and shrubs.

First-class rating became effective on this traffic on January 10, 1921.

Complainant intimates that the case for the nurserymen was not thoroughly presented in *Express Classification, 1920*, *supra*, and here proposes that nursery stock be rated according to the weight of the packages prepared for shipment, viz, packages weighing 500 pounds or less, second class; those weighing from 500 to 800 pounds, first class; and those weighing from 800 to 1,200 pounds, one and one-half first class.

The present record affords no basis for questioning the soundness of the findings in *Express Classification, 1920, supra*. Indeed, it serves to confirm what was there found concerning the transportation characteristics of nursery stock. It was testified here that approximately 80 to 85 per cent of the shipments are made in bales. These bales are irregular in form and unwieldy, the weight being largely concentrated at the bottom, and thus are difficult to handle and stow properly with other shipments. Two bales said to be illustrative of the packages used in this traffic were exhibited at the hearing. The larger bale contained about 20 trees and was about 9 feet long. The roots of the trees were bundled together and tied with wet moss or excelsior. To exclude air, paper was wound around the roots and packing, and the whole enclosed within a wrapping of burlap. The trunks were protected by rice straw bound with cord. The smaller package was prepared in the same manner, but was shorter, its length being only about 7 feet. The larger package was estimated to weigh approximately 35 pounds. This weight appears much below the average of shipments in bales. Statistics supplied by complainant show that of 301,506 bales the average weight was 99 pounds. The shipments in bales from one large shipping point varied in weight from 30 to 700 pounds, the average being 99.4 pounds, and ranged in length from 3 to 20 feet. As ornamental trees frequently are shipped in a more advanced stage of development, they tend to be longer and heavier than fruit trees. In extreme instances ornamental trees as long as 40 feet are shipped.

Boxes used by shippers vary in dimensions. From one large shipping point boxes commonly range in length from 8 to 10 feet, but in some instances they are longer. A shipper at a different point uses boxes averaging 4 feet in length. These boxes contain, besides nursery stock, packing of wet moss or similar substance, heavy paper, and in some cases dirt, packed around the roots. The average weight of 66,000 boxes of trees shipped by complainant's members is stated to be 137 pounds. From one large shipping point the average weight of shipments in boxes during the past shipping season was 195 pounds, but some boxes weighed as much as 1,000 pounds. Shipments of the latter weight are comparatively infrequent. A witness for complainant estimated that they represent not to exceed 2 per cent of the entire movement of nursery stock.

Berry or vegetable plants, boxed or crated, are rated second class. But these packages are much smaller than the boxes and bales containing trees or shrubs and are more readily handled. Moreover, the weight per cubic foot of these plants is heavier than that of trees or shrubs. Plants in crates are said to weigh from 20 to 25 pounds per cubic foot, whereas nursery stock is said to weigh

15 pounds per cubic foot in boxes and 12 pounds per cubic foot in bales. No competition exists between trees and shrubs on the one hand and vegetable or berry plants on the other.

Complainant states that the method of packing described ordinarily affords full protection for nursery stock while in transit, although damage occasionally results from leaving shipments exposed to the weather on station platforms or elsewhere. Claims for loss and damage are small, it is said, and generally caused by failure to deliver. It is pointed out that these packages will not cause damage to other articles being transported in the same cars and that they are not subject to loss by pilferage. Articles rated second class which are said to have characteristics less favorable in respect to these matters than those of trees and shrubs are, among others, dead rabbits, fresh oysters, fresh fish, eggs, milk, ice, berries, fruits and vegetables, fish, fertilizers, and hides of domestic animals. None of these articles is competitive with or analogous to trees and shrubs. The movement of trees and shrubs, as pointed out in *Express Classification*, 1920, *supra*, is seasonal. Many of the commodities instanced are transported in large volume and in packages unlike those in which trees and shrubs move. Berries, fruits, and vegetables, defendant states, move in carloads and sometimes in trainloads from the principal producing sections to the large markets. Less-than-carload shipments of these and other articles of food move daily in large volume from commission houses to dealers, the shipments being regular and the packages uniform.

Complainant contrasts the first-class express rates with materially lower less-than-carload class rates applying by freight on trees, shrubs, and vines under certain condition of packing. No movement is shown under freight rates. It is clear that the service rendered by express is not comparable with that by freight. The quick transportation furnished by express service is of consequence, and purchasers of nursery stock, who usually bear the transportation charges, frequently insist that shipments be made by express. In this connection it is worthy of note that the fear expressed in behalf of certain shippers in *Express Classification*, 1920, *supra*, that a first-class rating would discourage movement of the traffic has not been realized.

Complainant stresses the fact that many of the shippers and receivers of nursery stock are outside the delivery limits, and consequently receive no benefit from pick-up and delivery service included in the rates. Other shippers, on the other hand, are accorded this service because of their location within the designated limits. The record does not warrant, nor do the issues permit, the

establishment of specific rates taking into account factors of this character.

Nursery-stock traffic, as pointed out by defendant, is subject to elaborate and complicated quarantine regulations, compliance with which requires of defendant time and expense.

We find that the classification rating and rates assailed were not and are not unreasonable or unduly prejudicial. The complaint will be dismissed.

93 I. C. C.

No. 15149

NEW ENGLAND DRAWN STEEL COMPANY v. DIRECTOR GENERAL, AS AGENT, BALTIMORE & OHIO RAILROAD COMPANY, ET AL.

Submitted June 14, 1924. Decided October 23, 1924

Rates charged on steel rods, in coils, in carloads, from Pittsburgh and Johnstown, Pa., from Buffalo, N. Y., and from points taking the same rates to Mansfield, Mass., found inapplicable. Reparation awarded.

Frederick E. Brown and Clark & LaRoe for complainants.

John F. Finerty and R. T. McKenna for Director General of Railroads, as agent.

Guernsey Orcutt for corporate carriers.

REPORT OF THE COMMISSION

DIVISION 2, COMMISSIONERS AITCHISON, ESCH, AND CAMPBELL

BY DIVISION 2:

Exceptions were filed by the complainant and defendants to the report proposed by the examiner and the case was orally argued.

Complainant, a corporation, manufactures iron and steel and has its principal place of business at Mansfield, Mass. By complaint filed September 13, 1923, it alleges that since January 1, 1918, defendants have charged for the transportation of wire rods in carloads, from Pittsburgh and Johnstown, Pa., from Buffalo, N. Y., and from points taking the same rates, to Mansfield the full fifth-class rates although there were and are commodity rates in effect that were and are lower; and that the charges, paid and borne by complainant, were excessive and unreasonable. The prayer is for reparation.

This proceeding was instituted by the filing of a list of overcharge claims on the informal docket by complainant August 31, 1922. In so far as the director general is concerned, that is, during the period of Federal control, the sole issue is whether the rates charged were applicable.

The complaint is based upon our decision in *Lancaster Steel Products Corp. v. Director General*, 73 I. C. C. 567, hereinafter called the *Lancaster case*, wherein we found that the fifth-class rates charged on wire rods, in carloads, from Canton and Youngstown, Ohio,

and from the Pittsburgh district to Lancaster, Pa., were inapplicable and unreasonable.

The question here presented is whether the shipments received by complainant consist of bars in coils or rods in coils. Clearly the material was steel in coils. Bars, as well as rods, may be straight, crooked, bent, curved, deformed, and presumably may be coiled. Steel bars in carloads are rated substantially as fifth class, minimum 36,000 pounds. Rates on "unfinished" rods in coils in carloads approximate the sixth-class rates, and the minimum is 56,000 pounds.

Except from Johnstown, during the period in question, the descriptions of bars were as follows:

From January 1, 1918, to October 31, 1918, inclusive.

Bars, Iron and Steel:

Will not apply on bars, either square, round or otherwise shaped, on which any work has been done, except that of galvanizing, drawing, grinding, hammering or rolling.

From November 1, 1918, to December 29, 1919, inclusive.

Bars, Iron and Steel, N. O. I. B. N. See Note:

NOTE.—Ratings apply on drawn or rolled iron or steel bars, either square, round or otherwise shaped, also on such bars when galvanized, ground, hammered or punched, but these ratings will not apply if further work has been done.

From December 30, 1919, to the present time.

Bars, Iron or Steel, N. O. I. B. N. See Note:

NOTE.—Ratings apply on drawn or rolled iron or steel bars, either square, round or otherwise shaped in the drawing or rolling process, also on such bars when bent, twisted or otherwise deformed, galvanized, ground hammered, punched or sheared, but ratings will not apply if further work has been done.

There is a specific description applicable on shipments of bars from Johnstown which has been substantially as follows since 1911:

Bars, Iron and Steel:

Will not apply on bars, either square, round or otherwise shaped, on which any work has been done, except that of galvanizing, drawing, grinding, hammering or rolling.

It is noted that the ratings provided for bar steel do not specifically contemplate shipments in coils.

During the period covered by the complaint the commodity description applicable on shipments of rods from Pittsburgh and Johnstown to Mansfield was as follows:

Rods, bolt, nail, rivet and wire (iron or steel) in coils, (not in straight lengths) unfinished, not drawn through a die, not lighter than No. 8 gauge or greater than one and one-quarter ($1\frac{1}{4}$) inches in diameter, which can be transported in open cars without damage from exposure to weather, in carloads.

Complainant's shipments were unfinished in the sense that the material was used for manufacturing wire, and the record shows that these steel coils were not drawn through a die; they were not lighter than No. 8 gauge or greater than 1.25 inches in diameter, and were actually transported in open cars without loss or damage of any kind.

In the *Lancaster case* we said at page 569:

The evidence is that this material is "wire rods" and is so known to the steel trade generally, notwithstanding the fact that some of it is rectangular and some hexagonal in shape and that part of it is ultimately manufactured into articles other than ordinary commercial wire. The various rods, samples of which are exhibited of record, conform in size and in all other respects to the commodity tariff description, which contains no restrictions as to value or chemical analysis. Commodity rates therefore were and are applicable.

The commodity shipped by complainant was substantially the same as that in the *Lancaster case* on which we found commodity rates on coiled steel rods were applicable.

Upon the record and following the *Lancaster case* we find that the rates complained of were and are inapplicable to the extent that they exceeded or exceed the contemporaneous commodity rates on rods (iron or steel) in coils herein found applicable; that complainant made shipments as described, paid and bore the charges thereon, and was damaged thereby in the amount of the difference between the charges collected and those which would have accrued at the rates herein found applicable; and that complainant is entitled to reparation, with interest. Complainant should comply with Rule V of the Rules of Practice.

93 I. C. C.

No. 14682

DEVINE & ASSELSTINE ET AL. *v.* ATLANTIC COAST LINE
RAILROAD COMPANY ET AL.

Submitted June 23, 1924. Decided October 23, 1924

Rate for the transportation of grapefruit, in straight carloads or in mixed carloads with oranges, from Jacksonville, Fla., to Billings, Great Falls, Helena, and other Montana points taking the same rate found not unreasonable. Complaint dismissed.

O. W. Tong for complainants.

Henry Thurtell, A. J. Laughon, L. B. Woods, J. N. Davis, and F. M. Dudley for defendants.

REPORT OF THE COMMISSION

DIVISION 2, COMMISSIONERS AITCHISON, ESCH, AND CAMPBELL

BY DIVISION 2:

Exceptions were filed by the complainant to the report proposed by the examiner, and the case was orally argued.

The complainants are Devine & Asselstine, a copartnership composed of Oshey Devine and George H. Asselstine, with principal place of business at Great Falls, Mont.; the Lindsay-Billings Company, a corporation, with principal place of business at Billings, Mont.; the Lindsay-Helena Company, a corporation, with principal place of business at Helena, Mont.; the Midland Fruit Company, a firm, with principal place of business at Billings; the Suhr Fruit Company, a corporation, with principal place of business at Great Falls; and the Capital Commission Company, a corporation, with places of business at Great Falls, Butte, Bozeman, Havre, and Glasgow, all in Montana, all engaged in the fruit business. They allege that the rates charged for the transportation of grapefruit in straight carloads, or in mixed carloads with oranges, from producing points south of Jacksonville, Fla., to Billings, Helena, and Great Falls were, are, and for the future will be unreasonable, and pray reasonable rates for the future and reparation on shipments made during 1921, 1922, and 1923. At the hearing the complaint against the through rates from the points of production south of Jacksonville was withdrawn and the complaint confined to the rates from

Jacksonville, as parts of the through rates from the points of production.¹ Rates will be stated in cents per 100 pounds.

The basis of rates prayed for the future, and to which reparation is asked on past shipments, is that contemporaneously applicable on oranges, in straight carloads, between the same points. The following is a history of the rates on grapefruit and oranges from Jacksonville and producing points south thereof to Montana common points during the period here in question.

	Grapefruit from Jacksonville	Oranges from Jacksonville	Oranges from Jacksonville and south
Prior to March 1, 1913.....	\$1.80	\$1.80	-----
March 1, 1913.....	1.625	1.80	-----
March 3, 1913.....	1.625	1.76	-----
April 7, 1913.....	1.625	1.765	-----
May 7, 1913.....	1.625	1.76	-----
May 3, 1915.....	1.625	1.625	-----
June 25, 1918.....	2.03	2.03	-----
February 20, 1919.....	2.03	1.565	-----
August 26, 1920.....	2.705	-----	\$2.085
December 21, 1921.....	2.255	-----	2.085
January 1, 1922.....	2.255	-----	1.875
January 16, 1922.....	2.255	1.875	-----
July 1, 1922.....	2.03	1.875	-----
October 1, 1923.....	2.03	¹ 1.875	-----
Present.....	2.03	¹ 1.875	-----

¹ Oranges and grapefruit in mixed carloads, \$2.03.

The reduction of the rate on grapefruit from \$1.80 to \$1.625 on March 1, 1913, was the result of *Lindsay & Co. v. G. N. Ry. Co.*, 25 I. C. C. 424, decided December 9, 1912, when that readjustment was ordered to Helena. The reduction of the rate on oranges from \$1.76 to \$1.625 on May 3, 1915, was the result of *Lindsay & Co. v. N. P. Ry. Co.*, 33 I. C. C. 150, decided February 9, 1915, where we declined to reduce the rate of \$1.625 on grapefruit, prescribed by us in the case first cited, but where we did reduce the rate of \$1.76 on oranges in straight carloads, and on oranges and grapefruit in mixed carloads, to Helena, Great Falls, Butte, and Billings, to \$1.625. The latter rate, if subjected only to the general increases and reductions which have since been made, would now be \$2.435, compared with the present rate of \$2.03. But certain voluntary reductions were made in the rate both on grapefruit and on oranges. Thus, on December 21, 1921, the carriers voluntarily reduced the rate on grapefruit from \$2.705 to \$2.255. Also on February 20, 1919, the Director General of Railroads voluntarily reduced the rate on oranges from \$2.03 to \$1.565, and published the latter rate not only from Jacksonville but from producing points south of Jacksonville.

¹ At the oral argument the complainant stated that it sought the application on grapefruit of the rate contemporaneously applicable on oranges, whether the latter applied from Jacksonville or from producing points south of Jacksonville.

This reduction was brought about by extending the application of the Group A rate, in transcontinental grouping, on all commodities, from the north Atlantic coast to Florida, and, as there was a Group A rate on oranges, that rate was made applicable from Florida, along with the other Group A rates. There was no grapefruit rate from Group A, and a corresponding reduction in the grapefruit rate from Florida was not made. On January 16, 1922, the Group A rate on oranges from Florida points was made to apply from Jacksonville and a few other Florida basing points only, and on October 1, 1923, the rate on oranges and grapefruit in mixed carloads from Jacksonville was made \$2.03, the same as on grapefruit in straight carloads. The rate of \$1.875 on oranges in straight carloads was not changed.

It will thus be seen that the rate on grapefruit attacked is the rate of \$1.625, prescribed by us, and voluntarily reduced by the carriers to a basis 40.5 cents lower than it would be if only the general increases and reductions approved by us had been applied thereto. It will also be seen that the shipments in question all moved subsequent to the disruption, on February 20, 1919, of the equalization of the rates on grapefruit and oranges which had obtained since May 3, 1915, as a result of our reduction in the second case cited, of the rate on oranges to the grapefruit basis. The final question is therefore whether the rate on oranges which the director general prescribed for application from Florida, first from Jacksonville and producing points south thereof, and later only from Jacksonville, affords an appropriate basis of a rate for grapefruit from Jacksonville.

The defendants contend that the orange rate should not be used as the basis for an award of reparation on grapefruit, because the orange rate from north Atlantic points, in Group A, which was extended to Florida, was in reality an import rate, no oranges being raised in the north Atlantic territory; that the extension of the Group A rate to Florida was not peculiar to oranges, but, on the contrary, was merely incidental to the extension of that group to Florida on commodities generally; that that adjustment was erroneously made as to oranges; that there never has been a carload shipment of oranges from Florida to Montana, and the rate was therefore a paper rate; that grapefruit, on the other hand, does move from Florida to Montana in carload lots; that the rate on grapefruit, rather than on oranges, should therefore govern the relationship of the rates on the two commodities; and that the rate on grapefruit from Florida is reasonable, as evidenced by the fact that it is to-day 40.5 cents lower than it would be if the rate prescribed by us in the case first cited, and which we refused further to reduce in the case last cited, had been subjected, without the voluntary reduction

on December 21, 1921, only to the general increases and reductions approved by us.

The record shows that oranges do not move from Florida to Montana in carloads. The only oranges which have moved from Florida to Montana in the past were an occasional less-than-carload lot, shipped with a carload lot of grapefruit, and on which the less-than-carload rate was paid. There are, however, continuous movements of grapefruit from Florida to Montana. On the other hand, carload shipments of oranges, but not of grapefruit, move in continuous volume from California to Montana. In other words, Florida is Montana's source of supply for grapefruit and California its source of supply for oranges. One of the complainants testified that it is doubtful if oranges would move from Florida to Montana in substantial quantities, in any event, except between the seasons for the Valencia and navel oranges from California, which sometimes are as much as six weeks apart and sometimes overlap.

The complainant states that the average distance from Jacksonville to the Montana point in question is 2,244 miles, and from the producing points 2,778 miles. The rate on grapefruit from Jacksonville is \$2.03, as stated. The complainant compares that rate not only with the \$1.875 rate on oranges from Jacksonville but shows, in addition, that oranges and grapefruit are usually grouped together in the classification and in the publication of commodity rates; that to 17 destinations in Louisiana, Texas, Arkansas, and Oklahoma the rates on grapefruit from Jacksonville range from 75 cents to Alexandria, La., 807 miles, to \$1.19 to El Paso, Tex., 1,805 miles; that from New Orleans, La., to various northern destinations the rates on oranges, grapefruit, and bananas are the same; that from New Orleans to Great Falls, 2,269 miles, the rate is \$1.875 on bananas, oranges, and grapefruit, subject to a minimum of 20,000 pounds on bananas and 26,000 pounds on grapefruit, compared with \$2.37 on grapefruit and \$2.215 on oranges from Lake Wales, Fla., a producing point, to Great Falls, 2,687 miles; that the rate on oranges is \$1.73 from California to a destination blanket extending from Chicago, Ill., 2,257 miles, to New York, 3,177 miles, compared with \$2.46 from Fort Myers, Fla., to Montana points, an average distance of 2,719 miles; and that the average charges per car on the 25 cars here in issue were \$822.04 for an average haul of 2,778 miles and an average weight of 28,765 pounds, compared with \$636.14 on oranges from Florida and \$497.63 on oranges from California, that would accrue for the same average weight and distance.

Included in the defendants' evidence is a comparison of the revenue per car of \$681.86 from Bradentown, Fla., a producing point, to Helena, 2,739 miles (based on 28,500 pounds, the average

loading of a number of shipments in December, 1922), with that of \$386.45 to Chicago, 1,326 miles; \$370.50 to St. Louis, 1,186 miles; \$399 to Davenport, Iowa, 1,451 miles; and \$456 from Minneapolis, 1,747 miles; a comparison of the rate of \$2.03 from Jacksonville to Helena, on grapefruit, with the rate of \$1.62 from Fresno, Calif., on oranges; and revenue per car of \$528.78, and car-mile earnings of 13.25 cents, on grapefruit, from Jacksonville to Helena, 2,479 miles, with revenues per car ranging from \$444 to \$969 and car-mile yields ranging from 13.62 to 17.89 cents on 17 commodities, which move in box cars, from New York to Helena, 2,430 miles.

There is no justification for charging higher rates on grapefruit than on oranges. Both move in refrigerator cars under substantially the same conditions of transportation. The question here is whether the measure of reasonableness for the two commodities should be the rate on grapefruit prescribed by us in the case cited, and which would be 40.5 cents higher than the present rate if subjected only to the general increases and reductions subsequently approved by us, or the rate on oranges which the director general established from Florida when the general Group A basis on all commodities applicable from the north Atlantic coast, was made to include Florida. The grapefruit rate from Florida to Montana actually moves traffic in substantial and continuous volume. The orange rate does not. The director general gave no special thought to the reasonableness of the rate on oranges when he established the Group A basis on oranges from Florida. That rate from New York to Montana was essentially an import rate. It, rather than the grapefruit rate prescribed by us, and sustained as reasonable in a subsequent proceeding before us, can not be accepted as the reasonable basis for grapefruit and oranges from Jacksonville. The comparisons submitted by the complainant are not such as to warrant a reduction in that rate. The record as a whole does not warrant a finding of unreasonableness of the rate on grapefruit from Jacksonville to these Montana points.

The complaint will be dismissed.

No. 14763

SHEARMAN CONCRETE PIPE COMPANY v. SOUTHERN
RAILWAY COMPANY ET AL.

Submitted June 16, 1924. Decided October 23, 1924

Rates on concrete sewer pipe, in carloads, from Knoxville, Tenn., to South Carolina points found not unreasonable, unjustly discriminatory, or unduly prejudicial, except the rate on two carloads to Oakley, S. C., which is found unreasonable. Reparation awarded.

A. N. Shearman and W. E. Allen for complainant.

C. J. Rixey, jr., W. N. McGehee, and J. P. Cook for defendants.

REPORT OF THE COMMISSION

DIVISION 2, COMMISSIONERS AITCHISON, ESCH, AND CAMPBELL

By DIVISION 2:

No exceptions were filed to the report proposed by the examiner.

Complainant, A. N. Shearman, manufactures concrete pipe at Knoxville, Tenn., under the trade name of Shearman Concrete Pipe Company. By complaint filed March 14, 1923, he alleges that the rates charged on numerous carloads of concrete sewer pipe or drain-tile shipped from Knoxville to various points in South Carolina between July 10, 1920, and November 30, 1921, were unreasonable, unjustly discriminatory, and unduly preferential of other localities, particularly Birmingham, Ala., and Chattanooga, Tenn. Reparation is asked. No evidence was introduced as to unjust discrimination and no further consideration will be given that issue. Rates will be stated in cents per 100 pounds.

Charges were collected on the shipments at commodity rates ranging from 16 to 31.5 cents, which were the same as those concurrently in effect to the same destinations from Chattanooga and Birmingham, except to Oakley, S. C., to which a rate of 31.5 cents applied from Knoxville, and 27.5 cents from Chattanooga and Birmingham. The 27.5-cent rate was subsequently made applicable from Knoxville.

Knoxville, Chattanooga, and Birmingham, as well as Rome, Ga., are grouped as to rates on concrete sewer pipe to points in South Carolina on and north of a line drawn from Walhalla, in western South Carolina, through Seneca, Anderson, Abbeville, Columbia,

Sunter, and Florence, and thence to Wilmington, N. C. The points of destination are all on or north of that line, except Oakley, to which higher rates applied prior to July 10, 1920, than from Chattanooga, Birmingham, and Rome. Rates varying in some instances from 4.5 to 7 cents lower than from the competitive origin points applied from Knoxville to points in North Carolina on and north of a line through Asheville, Charlotte, and thence to Wilmington, N. C., to which the distance is substantially less from Knoxville than from the competitive points named. The average distance to the principal points in South Carolina, north of the Walhalla-Wilmington line, from Knoxville is 312 miles; from Chattanooga, 392 miles; from Birmingham, 420 miles; and from Rome, 327 miles. The average distance to the points named in the complaint are shown by complainant's exhibits to be from Knoxville 339 miles, from Chattanooga 428 miles, and from Birmingham 458 miles.

Complainant contends that the relatively shorter distances from Knoxville than from Chattanooga and Birmingham entitles him to rates 5 cents less than those charged, except to Oakley, to which, it is submitted, the rates should have been 9 cents less than those charged. The rates asked would earn from 8.8 to 12.4 mills per ton-mile, and 11 to 20 cents per car-mile on the basis of the average loading of 32,700 pounds.

Complainant's sewer pipe is manufactured principally of cement and is about 20 per cent heavier per foot than competitors' product, which is manufactured of clay and shipped from Chattanooga, Birmingham, and Rome to the same destinations. Complainant's product, although substantially heavier, sells for approximately the same price per foot as does his competitors'. He is compelled to shrink his price to the extent of one-fifth of the freight charges in order to meet competition at destinations to which the rates are the same from the respective points of origin. Complainant testified that for this reason shipments have been very much curtailed, and in many instances business has been lost to competitors. Part of the disadvantage, however, is due to the nature of the commodity. Complainant shows that the average rate of 22.5 cents to South Carolina destinations from Chattanooga and Birmingham earns an average of 10.4 and 9.6 mills per ton-mile for distances of 428 to 458 miles, respectively, while the average rate sought from Knoxville, which is 5 cents lower, or 17.5 cents, would earn 10.1 mills for an average distance of 339 miles.

Complainant apparently favors a mileage scale of rates, so that Knoxville would have received the advantage of its location nearer to the destinations involved than Chattanooga and Birmingham. Such an adjustment, however, would have resulted in disadvantage

to complainant at other points to which the distances are less from Chattanooga and Birmingham than from Knoxville.

Defendants minimize the importance of the disparity in distance, observing that in any group adjustment where distance is to a more or less extent disregarded certain justifiable prejudice is bound to occur. They insist that the group rates charged were reasonable and that no undue prejudice has been practiced by the maintenance of the group system of rates.

They state that the commodity rates on sewer pipe are based on a rate at one time established from Chattanooga and Rome on a small differential of 2 cents over Macon, Ga., and that the rate from Macon reflected the effect of low intrastate rates in Georgia and South Carolina. Knoxville was later included in the origin group and enjoys the advantages that accrue from the rate history mentioned. In *Shearman Concrete Pipe Co. v. S. Ry. Co.*, 87 I. C. C. 344, we awarded reparation on shipments from Knoxville to South Carolina points to the basis of rates from Chattanooga and Birmingham. The destinations there under consideration are in the same general territory as those in the present case, and defendants draw the conclusion that, in the case cited, we approved the group basis of rates here attacked.

Defendants submit that the rates assailed compare favorably with rates prescribed by us from St. Louis to points in the Mississippi Valley, although rates to that territory are ordinarily on a lower level because of the more favorable transportation conditions. The same rates were prescribed from Louisville, Ky., to the Mississippi Valley generally as from St. Louis, although the average distance is 52 miles greater from Louisville. Sewer pipe is also shipped from Greensboro, N. C., to South Carolina, and the rates thereon are comparable with those from Knoxville. Rates cited from shipping points in central territory such as Akron, Ohio, St. Louis, Mo., Chicago, and Streator, Ill., to the South generally are on a higher basis for similar distances than the contemporaneous rates from Knoxville to South Carolina points. Additional comparisons are made which show that sewer pipe yields less than half the earnings on coal and substantially less than fertilizer and other lower-grade commodities.

At the hearing defendants explained in detail a proposed readjustment of rates on sewer pipe which is now in progress throughout southern territory. Many of these rates do not conform to the provisions of the long-and-short-haul rule of the fourth section, and some readjustment of them is required. The intrastate rates generally throughout the southern territory are lower than those on interstate traffic, and defendants state that after numerous conferences

between most of the sewer-pipe shippers and the railroads, a scale has been practically agreed upon to be applied by most of the carriers on both State and interstate traffic. This scale will result in material increases in the intrastate rates and increases as well as decreases in interstate rates. The readjustment is designed to preserve the present revenues of the carriers as far as possible. An exhibit shows the rates prescribed on sewer pipe by the State commissions of Georgia and Alabama, which the defendants have substantially agreed to observe in the general revision of their rates. Defendants urge that the mere proposed subsequent reduction of a rate, especially where there are increases and decreases as the result of a change from a group to a distance basis of rates is no justification for an award of reparation.

We find that the rates assailed, except to Oakley, were not unreasonable, unjustly discriminatory, or unduly prejudicial. We further find that the rate assailed to Oakley was unreasonable to the extent that it exceeded the rate contemporaneously applicable from Chattanooga; that complainant made two shipments to Oakley and paid and bore the charges thereon at the rate herein found unreasonable; that he has been damaged thereby in the amount of the difference between the charges paid and those which would have accrued at the rate herein found reasonable; and that he is entitled to reparation, with interest. Complainant should comply with Rule V of the Rules of Practice.

93. I. C. C.

No. 15018¹

WRIGHT & WIMMER v. CHICAGO, TERRE HAUTE & SOUTHEASTERN RAILWAY COMPANY ET AL.

Submitted September 19, 1924. Decided October 25, 1924

Rates on bituminous coal, in carloads, over interstate routes from mines in the Linton and Clinton groups in Indiana to Marion, Kokomo, Elwood, Michigantown, and Warren, Ind., found not unreasonable or unduly prejudicial. Complaints dismissed.

F. D. Roberts for complainants.

Jonas Waffle for Indiana Coal Traffic Bureau, intervener.

J. N. Davis and *T. M. Hanrahan* for defendants.

REPORT OF THE COMMISSION

DIVISION 4, COMMISSIONERS MEYER, EASTMAN, AND POTTER

By DIVISION 4:

These cases were presented under the shortened procedure. Exceptions were filed by complainant to the report proposed by the examiner.

Complainants, retail coal dealers, allege that the rates on bituminous coal over interstate routes from mines in the Linton and Clinton groups in Indiana to Marion, Kokomo, Elwood, Michigantown, and Warren, Ind., were and are unreasonable, unjustly discriminatory, and unduly prejudicial. We are asked to award reparation on numerous shipments made between August 26, 1920, and March 5, 1921, and to prescribe reasonable rates for the future. Rates will be stated in amounts per net ton.

Complainants' shipments originated at West Clinton and Latta, on the Chicago, Terre Haute & Southeastern, and were delivered either to the Toledo, St. Louis & Western at Humrick, Ill., or the Lake Erie & Western at Cheneyville, Ill. The Toledo, St. Louis & Western serves directly two of the coal yards at Marion and the coal yards at Warren, Michigantown, and Kokomo. The Lake Erie &

¹ This report also embraces No. 15018 (Sub-No. 1), *J. F. McClain Coal Company v. Same*; No. 15018 (Sub-No. 2), *Home Ice & Coal Company et al. v. Chicago, Terre Haute & Southeastern Railway Company et al.*; No. 15018 (Sub-No. 3), *E. P. Miller v. Chicago, Terre Haute & Southeastern Railway Company et al.*; No. 15018 (Sub-No. 4), *Mason & Hamilton v. Same*; No. 15018 (Sub-No. 5), *Sam Panabaker & Son v. Same*; and No. 15018 (Sub-No. 6), *J. G. Wolf & Sons v. Same*.

Western serves directly one of the coal yards at Elwood. One of the coal yards at Marion is on the Chesapeake & Ohio of Indiana, and two of the coal yards at Elwood are on the Pennsylvania. Complainants, the consignees, bought the shipments f. o. b. points of origin, and the consignors specified either the Toledo, St. Louis & Western or the Lake Erie & Western without stating that such specification was with reference merely to delivery. The only connections between the originating carrier and the carriers named by the consignors are at the interchange points stated above.

Prior to August 26, 1920, and since March 5, 1921, rates from Indiana groups to the destinations named were, and they now are, the same over both interstate and intrastate routes. During the intervening period rates over the intrastate routes were lower than those applicable interstate, due to the failure of the Indiana commission to permit any increase until October 4, 1920, and to its refusal to permit, even on that date, the same increases as were authorized in *Increased Rates, 1920*, 58 I. C. C. 220.

From October 5, 1918, to August 25, 1920, the rate, intrastate and interstate, from the Clinton and Linton groups to all of the points named except Warren was \$1.25; to Warren the rates were \$1.40 from the Clinton and \$1.45 from the Linton group. On August 26, 1920, these rates were increased for interstate application to \$1.75 to the other points and to \$1.96 and \$2.03, respectively, to Warren. On October 4, 1920, they were increased for intrastate application to \$1.45 to all of the points except Warren and to that point to \$1.865 and \$1.935, respectively. The rate to Indianapolis, Ind., then 90 cents, was increased 33 $\frac{1}{3}$ per cent, or to \$1.20, and rates to the gas belt, which included all of the destinations named except Warren, were made 25 cents higher. The rates to Warren were increased 33 $\frac{1}{3}$ per cent. As a result of the order in *Indiana Rates, Fares and Charges*, 60 I. C. C. 337, the intrastate rates were increased, effective March 5, 1921, to the basis of the interstate rates. On July 1, 1922, the rate from the Clinton and Linton districts to all of the destinations named except Warren was reduced to \$1.58, and to Warren the rates became \$1.77 from the Clinton district and \$1.83 from the Linton district. On November 5, 1923, the Warren rates became \$1.76 and \$1.81, respectively.

It has been customary to use the interstate routes through Humrick and Cheneyville rather than the intrastate routes, as the latter necessitate the use of a third carrier from Terre Haute to Frankfort. Complainants are aware of our ruling that where a consignor specifies the routing that he desires his shipments to take by naming a carrier which, in connection with the originating line, forms a through route from point of origin to destination, the initial car-

rier can not be charged with having misrouted the shipment if it bills it over that route instead of selecting a cheaper route in which those carriers participate but with a third carrier intervening; but they contend nevertheless that under the circumstances of this case the initial carrier should have sent their shipments over the intrastate routes. The consignors routed the shipments in the customary way, and the carriers were justified in assuming that movement over the usual routes was desired. In the case of shipments to three of the coal yards, the designation of the Toledo, St. Louis & Western or Lake Erie & Western could not have been for final delivery, as the yards are located on other lines.

Complainants also allege that the rates charged were and are unreasonable. They make comparison with rates and distances from Illinois mines to Indiana destinations. However, they do not question the reasonableness of the grouping of points either of origin or destination, and the distances stated are those from particular points of origin in Indiana and Illinois to particular destinations in Indiana. These furnish no guide as to the distances generally from and to the various groups.

The Indiana Coal Traffic Bureau intervened in opposition to the complaints in so far as they related to rates for the future. In a recent decision the Public Service Commission of Indiana, upon complaint of the Indiana State Chamber of Commerce, prescribed rates from mines to consuming points in the State and under this decision the rate from Clinton and Linton districts to Kokomo, Elwood, Marion, and Michigantown will become \$1.48 and the rates from the Clinton and Linton districts to Warren will become \$1.55 and \$1.65, respectively.

We find that complainants' shipments were not misrouted and that the rates assailed were not and are not unreasonable or otherwise in violation of the interstate commerce act. The complaints will be dismissed.

No. 15212

ARMOUR FERTILIZER WORKS *v.* SOUTHERN RAILWAY
COMPANY ET AL.

Submitted April 24, 1924. Decided October 25, 1924

Shipments of ground limestone, in carloads, from Barber, Va., to Greensboro, N. C., found to have been overcharged. Defendants directed to refund overcharges to complainant, if it is entitled to receive them, and complaint dismissed.

Paul E. Blanchard for complainant.

A. P. Gilbert for Chesapeake & Ohio Railway Company and
Halsey McGovern for Southern Railway Company.

REPORT OF THE COMMISSION

DIVISION 4, COMMISSIONERS MEYER, EASTMAN, AND POTTER

BY DIVISION 4:

This case was presented under the shortened procedure. Exceptions were filed by defendants to the report proposed by the examiner.

By complaint seasonably filed complainant, a corporation operating commercial fertilizer plants at Greensboro, N. C., and other points, alleges that the rate charged on 10 carloads of ground limestone, shipped during the period September 13, 1921, to October 24, 1921, from Barber, Va., to Greensboro, was in excess of the rate authorized by defendants' tariffs. Reparation is asked. Rates will be stated in amounts per net ton.

The shipments moved over the Chesapeake & Ohio to Lynchburg, Va., and thence over the Southern to Greensboro. No joint rate was in effect and the lowest combination rate based on Lynchburg. The factor of the Chesapeake & Ohio to that point was \$1.40 and a like factor applied over the Southern from Lynchburg to destination. Excepting one shipment, admittedly overcharged in that a rate of \$3.08 was assessed, charges were based on the aggregate of the separate components. Complainant contends that by reason of deductions authorized under a combination rule in Agent Kelly's I. C. C. No. U. S. 1, originally published by Agent Morris, the aggregate rate was \$2.50.

The tariff of the Chesapeake & Ohio provided that—

Except as otherwise indicated, Commodity Rates on Limestone, carloads, are subject to the rules for constructing Combination Rates as provided in Agent Eugene Morris' Freight Tariff No. 228, I. C. C. No. U. S. 1. * * *

The Southern's tariff contained no combination rule and did not refer to this agency tariff. As amended by supplement 12, effective April 5, 1921, Agent Kelly's tariff, according to its title-page, contains "Rules for constructing combination rates on commodities enumerated in tariff, as amended (for a continuous rail shipment) between points on railroads shown as participating carriers as named on page 2 of tariff as amended." As participating carriers, it shows "All railroads shown, by appropriate powers of attorney or concurrences in tariffs referring to this issue, as parties to rates made subject to the rules embodied herein." Respecting its application, it provides that—

Except as otherwise indicated herein and where specific reference hereto is made in tariffs, rules provided herein apply in connection with rates made subject to the rules embodied herein.

It is defendants' position that by reason of these provisions this tariff was restricted in its application to continuous rail shipments between points on railroads shown as participating carriers; likewise to points on railroads shown as parties to rates made subject to the rule. Accordingly, it is urged that the rule in question was not applicable in connection with the Southern or on such traffic to Greensboro.

These claims need not be discussed in detail, it being sufficient to say that the statement on the title-page of Agent Kelly's tariff, and likewise the reference in that tariff to participating carriers, is similar to the phraseology ordinarily employed in joint tariffs. They are general in their nature and should not be given a narrow construction which would defeat the specific provisions as to the application of the tariff provided in the body of the issue.

In *Standard Oil Co. v. M. V. R. R. Co.*, 81 I. C. C. 193, the complainant alleged that an illegal rate had been assessed on shipments of gas oil from Big Heart, Okla., to Louisville, Ky. The rate assailed was a combination rate basing on East St. Louis, Ill. The tariff naming the factor to the basing point carried a combination rule, but so restricted the rule as to render it inoperative in connection with that factor. However, we found that so far as that tariff had to do with the issue presented, it must be construed as containing no rule. As the tariff naming the factor beyond the basing point was subject to a combination rule, the carriers parties to that rate were required to protect the aggregate rate constructed by the

observance of that rule. In *Combination Rates on Agricultural Limestone*, 78 I. C. C. 579, we further found that—

A provision in a tariff carrying rates which may be used in combination to the effect that the rates are subject to the combination rule in Agent Morris I. C. C. U. S. 1, is equivalent to the publication of said rule in the rate tariff.

As the tariff of the Chesapeake & Ohio in reality contains a rule which was not so specifically restricted as to render it inoperative in connection with this traffic to Greensboro, that carrier must protect the aggregate rate constructed on the basis of the rule.

We find that the Southern, under its tariff, was entitled to retain charges based on its local rate of \$1.40 per net ton, but that the aggregate rate applicable was \$2.50 per net ton and that the shipments were overcharged. The record does not establish who paid and bore the freight charges and no order for reparation may be entered, but the overcharges, with interest, should be promptly refunded to complainant, if it is entitled to receive them.

The complaint will be dismissed.

93 I. C. C.

No. 15162

INTERNATIONAL AGRICULTURAL CORPORATION
ATLANTA & WEST POINT RAILROAD COMPANY
ET AL.

Submitted October 1, 1924. Decided October 25, 1924

Assessment of demurrage charges on six private cars under lease while same were on tracks of the lessee found not unreasonable or otherwise unlawful. Complaint dismissed.

J. W. White for complainant.

F. B. Porter for intervener.

R. B. Gwathmey for defendants.

REPORT OF THE COMMISSION

DIVISION 4, COMMISSIONERS MEYER, EASTMAN, AND POTTER

BY DIVISION 4:

Exceptions were filed by defendants to the report proposed by the examiner. Our conclusions differ from those recommended by him.

Complainant, a corporation, manufactures fertilizer and fertilizer compound, one of its plants being located at East Point, Ga. By complaint seasonably filed it alleges that the definition of private car, as published in Agent Fairbanks's tariff I. C. C. No. 8, effective July 7, 1920, is unjust, unreasonable, and unduly prejudicial. The complaint prays for an order requiring amendment of the tariff and cancellation of demurrage charges on six cars, which defendants are seeking to collect. The Southern Agricultural Tank Lines intervened in support of the complaint.

The cars in question were detained at complainant's East Point plant between various dates in July and August, 1920. The tariff provision, hereinafter referred to as the rule, which is here assailed, and which was in effect during the period in question, reads as follows:

Private car—A car having other than railroad ownership. A lease of a car is equivalent to ownership. Private cars must have the full name of the owner or lessee painted or stenciled thereon or must be boarded with full name of owner or lessee. If name of lessee is painted, stenciled or boarded on the car, then the car is exempt from demurrage for the lessee only. If the name of the lessee is not painted, stenciled or boarded on the car, then the car is exempt from demurrage for the owner only.

There is no dispute as to most of the facts. These cars were under bona fide lease to the complainant and were detained upon a track owned by it, but they did not bear any evidence that they were under lease to the complainant. The measure of the demurrage charges is not attacked.

The record contains copy of a letter addressed by complainant's traffic manager to defendants' joint agent at East Point, under date August 15, 1918, about the time the rule was first published and about two years prior to the period of detention covered by the complaint, in which it is stated that these cars were under lease to complainant and should be free from demurrage while at its plant. This letter contained a request that its receipt be acknowledged, but no acknowledgment was ever received. The individual to whom the letter was addressed is no longer in the employ of the defendants, and their testimony is that a search of their files fails to disclose any evidence of its receipt. They contend, however, that the question of whether or not the letter was received is immaterial, because, if received, it would not have constituted a compliance with the rule and therefore would not have affected the application of the charges in question.

It was testified for complainant that at about the same time the above letter was written instructions were given that these cars be marked in accordance with the rule, but the witness could not state whether these instructions had been carried out, or what steps, if any, had been taken to see that the markings, if applied, were maintained in a legible condition.

The matter of the rates, rules, regulations, and practices in connection with the use of private cars, was given exhaustive consideration in *In the Matter of Private Cars*, 50 I. C. C. 652. In dealing with the question of demurrage, we said, at page 705:

Under the existing tariffs of carriers, private cars are made the subject of demurrage when standing on the private tracks of owners. It is agreed by both carriers and owners that tariffs should be so worded as to exempt a private car from demurrage under such circumstances. It was stated that provision would have been made some time ago for such exemption except for the difficulty of determining who was the owner of a car. It was agreed that a shipper who leases a car for a term is to be considered the owner during such term, and that a stencil mark on the car as defined in the tariffs should be conclusive as to ownership for purposes of exemption from demurrage.

On page 710 we found:

That tariffs of carriers be so changed that private cars standing on the private tracks of owners shall not be subject to demurrage charges.

The rule here under attack was first incorporated in the tariffs following that decision. The complainant contends that our find-

ing was not properly carried into effect by the stringent and inflexible terms of the rule because, while the cars here under consideration were in fact private cars standing on the private track of the owner, which we said should not be subject to demurrage, they were nevertheless made subject to demurrage because of failure to comply with the provisions of the rule with respect to notice of ownership on the car itself.

The record contains numerous criticisms of the rule by complainant and intervener, based in most part, however, upon conjectures as to how it might prove unsatisfactory, rather than upon actual occurrences. For the defendants, on the other hand, it was testified that the rule in its general operation throughout the country had proved singularly free from objection.

On brief, the complainant suggests that the complaint would be satisfied by a finding that, as applied to the particular facts of this case, the rule operated unjustly, without condemning it in its general application. The defendants strenuously object to such a finding on the ground that the rule is reasonable and proper; that compliance with it is not unduly burdensome; and that the adoption of a policy under which shippers who fail to comply with the rule could come to us and obtain relief, would encourage disregard thereof, would increase litigation, and would result in confusion and discrimination which the rule was designed to prevent.

The fact that our finding in *In the Matter of Private Cars*, *supra*, with regard to demurrage on private cars while standing on the private tracks of the owners, was of a broad and unlimited nature affords no basis for the contention that in publishing the rule in accordance with that finding, the carriers might not include such reasonable and proper conditions as would tend to facilitate its practical application and prevent abuses. It was not only their right, but their duty to do so.

The record in this case shows that there are upwards of 300,000 private cars in operation throughout the country; that such cars are leased under various conditions for terms as short as a single trip; and that the task of formulating a rule which would give effect to our finding and at the same time have due regard for the interests of the carriers and the shippers, was attended by considerable difficulty. It further shows that the rule adopted was the result of mature deliberation, and has worked out in practice in a generally satisfactory manner; and no better substitute has as yet been brought to our attention. We therefore find that the rule was not unreasonable or otherwise unlawful.

There remains for consideration the question whether an exception should be made in this particular case. The complainant had ample notice and actual knowledge of the existence of the rule. It could have complied with the terms thereof so as to have avoided demurrage by making the proper notations on the cars at any time up to the date that demurrage began to accrue. Instead, it chose to rely upon a letter written about two years prior to the period of detention, which admittedly did not comply with the rule.

We find no extenuating circumstances which would justify making an exception to the rule in this case; on the contrary, we are of opinion that to make an exception upon such a state of facts would go far towards nullifying the effectiveness of the rule.

We find that the charges assailed were not unreasonable or otherwise unlawful, and an order will be entered dismissing the complaint.

93 I. C. C.

No. 15251

GENERAL CHEMICAL COMPANY v. DIRECTOR GENERAL,
AS AGENT

Submitted September 22, 1924. Decided October 25, 1924

Rate on ground fluorspar, in carloads, from Newell, Pa., to Camden, N. J., found not unjust or unreasonable. Complaint dismissed

J. D. Ross for complainant.

John F. Finerty and *E. C. Blanchard* for defendant.

REPORT OF THE COMMISSION

DIVISION 4, COMMISSIONERS MEYER, EASTMAN, AND POTTER

BY DIVISION 4:

This case was presented under the shortened procedure. No exceptions were filed to the report proposed by the examiner.

Complainant, a corporation manufacturing chemicals at various points, by complaint filed September 15, 1923, alleges that the rate of 16 cents charged for the transportation of eight carloads of ground fluorspar shipped between January 9 and February 17, 1920, inclusive, from Newell, Pa., to Camden, N. J., was unjust and unreasonable to the extent that it exceeded 14.5 cents. Reparation is sought. Rates are stated in cents per 100 pounds. The complaint was presented informally within the statutory period.

Fluorspar is a mineral product used by complainant at Newell and Camden in the manufacture of hydrofluoric acid. It is shipped to Newell in its crude lump state, ground at that point, and reforwarded to Camden.

Newell is a local station on the Pittsburgh & Lake Erie about 25 miles south of Pittsburgh, Pa. The shipments moved over the Pittsburgh & Lake Erie through Homestead Transfer, Pa., and the Pennsylvania to destination, 427 miles. Charges were collected at the applicable rate of 16 cents.

On October 1, 1917, the applicable rate was 10 cents. On May 3, 1918, a rate of 12 cents was published. Complainant asserts that this rate was established in error and should have been 11.5 cents to reflect the increase authorized in *The Fifteen Per Cent Case*, 45 I. C. C. 303. On June 25, 1918, under authority of General Order No. 28 of the director general, the rate became 15 cents. Effective

November 13, 1918, the rate was reduced to 14.5 cents, which reflected the October 1, 1917, rate plus subsequent authorized increases. On December 29, 1919, a rate of 16 cents was published. Complainant claims this rate should have been 14.5 cents. On August 26, 1920, under *Increased Rates, 1920*, 58 I. C. C. 220, the 16-cent rate became 22.5 cents. This rate was reduced on October 29, 1920, to 20.5 cents, reflecting the 10-cent rate of October 1, 1917, plus authorized increases since that date. The present rate, as reduced July 1, 1922, is 18.5 cents.

Complainant points out that on shipments which moved from March to August, 1920, reparation was awarded by us on the special docket to the basis of the rate here sought. It argues that the corporate carriers thereby recognized the injustice of assessing charges on other than the 10-cent rate base, which was in effect on October 1, 1917, plus the increases subsequently authorized, which basis they reestablished on October 29, 1920, by voluntarily reducing the rate then in effect. The subsequent reduction of a rate is insufficient to establish unreasonableness. Complainant offered no evidence to indicate that the earnings under the rate attacked were excessive. It urges that the rate was unreasonable *per se*. The average weight of the shipments was approximately 55,000 pounds per car. The rate assailed yielded car-mile and ton-mile earnings of 20.6 cents and 7.5 mills, respectively. These earnings do not appear excessive.

We find that the rate assailed was not unjust or unreasonable. The complaint will be dismissed.

No. 15525

WAGNER MOTOR COMPANY v. MICHIGAN CENTRAL
RAILROAD COMPANY ET AL.

Submitted September 2, 1924. Decided October 25, 1924

Rate on tractors, in carloads, from Detroit, Mich., to Mason City, Iowa, found not unreasonable, unjustly discriminatory, unduly prejudicial, or in violation of the fourth section. Complaint dismissed.

B. J. Drummond for complainant.

W. J. Stevenson and *C. W. Wright* for defendants.

REPORT OF THE COMMISSION

DIVISION 4, COMMISSIONERS MEYER, EASTMAN, AND POTTER

BY DIVISION 4:

This case was presented under the shortened procedure. No exceptions were filed to the report proposed by the examiner.

Complainant, a corporation, selling automobiles and tractors at Mason City, Iowa, alleges by its complaint filed December 10, 1923, that the rate charged by defendants on four carloads of Fordson tractors, shipped in July and September, 1923, from Detroit, Mich., to Mason City was unreasonable, unjustly discriminatory, unduly prejudicial to dealers at Mason City, and unduly preferential of dealers at Gordonsville and other points in Minnesota, and in violation of the long-and-short-haul provision of the fourth section. The prayer is for reasonable, nondiscriminatory, and nonprejudicial rates for the future, and reparation.

While complainant attacks the rates as being unreasonable, unjustly discriminatory, and unduly prejudicial, its primary ground for complaint is that the rate to Mason City exceeded the rates to more distant points to which Mason City is intermediate in violation of the fourth section. The shipments aggregated 80,000 pounds and moved over the Michigan Central to Michigan City, Ind., Lake Erie & Western (now New York, Chicago & St. Louis) through Tipton, Ind., to Peoria, Ill., and Minneapolis & St. Louis beyond, 885 miles. Charges were collected at a combination rate of 56 cents per 100 pounds composed of a fifth-class rate of 35 cents governed by the official classification to Keithsburg, Ill., a Mississippi River crossing, plus a class A rate of 21 cents, governed by the western classification,

beyond. When the shipments moved there was in effect on tractors, in carloads, a joint fifth-class rate of 52 cents governed by the official classification from Detroit to Minneapolis and St. Paul, Minn., and that rate applied to a number of intermediate points, including Gordonsville in southeastern Minnesota.

Complainant's allegation of a violation of the fourth section is predicated on the assumption that the 52-cent rate applied over the route of movement through Mason City. Such rate did not apply over that route and, therefore, no fourth-section violation existed, and, even if the rate paid had been in violation of the fourth section, that fact alone would not establish its unreasonableness. The class rates from central territory, including Detroit, to Minneapolis and St. Paul and intermediate points in southeastern Minnesota are on a basis entirely different from that applying to Iowa points. The rates to Iowa destinations including Mason City were established as a result of decisions in *Mississippi River Case*, 28 I. C. C. 47, and 29 I. C. C. 530, and in the *Interior Iowa Cases*, 46 I. C. C. 39, and the rates to Mason City, including the rate here attacked were found not unreasonable or unduly prejudicial in *North Iowa Traffic Asso. v. Director General*, 58 I. C. C. 491. The rate attacked produced but 13 cents per car-mile over the route of movement and is clearly not unreasonable for application on automobile tractors.

We find that the rate assailed was not unreasonable, unjustly discriminatory, unduly prejudicial, or in violation of the long-and-short-haul provision of the fourth section.

The complaint will be dismissed.

93 I. C. C.

No. 15694

CALIFORNIA RAND SILVER, INCORPORATED, v. COLORADO & WYOMING RAILWAY COMPANY ET AL.

Submitted September 29, 1924. Decided October 25, 1924

Less-than-carload rates on solvent naphtha, a coal-tar product, from Minnequa, Colo., to Johannesburg, Calif., found not unreasonable or otherwise unlawful. Complaint dismissed.

A. Larsson for complainant.

Berne Levy and *E. W. Camp* for defendants.

REPORT OF THE COMMISSION

DIVISION 4, COMMISSIONERS MEYER, EASTMAN, AND POTTER

BY DIVISION 4:

This case was presented under the shortened procedure. Exceptions were filed by complainant to the report proposed by the examiner.

Complainant, a corporation, alleges that the charges assessed for the transportation of solvent naphtha during the period January 16 to December 28, 1922, from Minnequa, Colo., to Johannesburg, Calif., were unreasonable, unjustly discriminatory, and unduly prejudicial. Reparation and a reasonable rate for the future are sought. Rates will be stated in amounts per 100 pounds.

The shipments consisted of crude and refined coal-tar naphtha in less-than-carload lots, ranging from 18,252 to 19,225 pounds each. While defendants assert that they performed the loading and unloading, this is disputed by complainant. The applicable third-class less-than-carload rate was charged, which prior to July 1, 1922, was \$2.97, and thereafter \$2.675. Over the route of movement the haul was 1,225 miles.

Johannesburg, the terminus of a branch line, is 29 miles from Kramer, Calif., the junction with the main line of the Atchison, Topeka & Santa Fe.

Complainant seeks the benefit of the contemporaneous carload rate on petroleum naphtha (not coal-tar naphtha) to Kramer, the junction point.

The following table sets forth the rates referred to by complainant:

Naphtha	From—	To—	Quantity	Minimum	Rate	
					Before July 1, 1922	After July 1, 1922
				<i>Pounds</i>		
Coal tar.....	Minnequa...	Johannesburg..	Less than carload..		\$2. 97	\$2. 675
Do.....	do.....	do.....	Carload.....	40,000	¹ 1. 56	¹ 1. 42
Petroleum.....	do.....	do.....	do.....	30,000	² 1. 305	² 1. 185
Coal tar.....	do.....	Kramer.....	do.....	40,000	1. 405	1. 265
Petroleum.....	do.....	do.....	do.....	30,000	³ 1. 18	³ 1. 06

¹ Combinations on Kramer; factor beyond Kramer 15.5 cents.

² Combinations on Kramer; factor beyond Kramer 12.5 cents.

³ Rates sought.

Complainant invites attention to the tariff requirement that the charge for a less-than-carload shipment shall not exceed the charge at the carload rate. That provision has no application here, inasmuch as the charges assessed were less than those which would have accrued under the applicable carload rates on coal-tar naphtha. If the carrier performs the loading and unloading and charges are later assessed on basis of carload rather than less-than-carload rate, a charge of 2.5 cents for loading and a similar charge for unloading is added to the carload rate.

At the rate charged on the shipments moving prior to July 1, 1922, the revenue was 48.4 mills per ton per mile. This defendants consider not unreasonable on less-than-carload traffic. According to complainant, coal-tar naphtha is heavier than, and not quite so inflammable as, petroleum naphtha; and the former is one and one-half times higher in price and a considerably stronger solvent. Petroleum naphtha and coal-tar naphtha are rated the same in consolidated classification. Because of this and their similar transportation characteristics, complainant contends that the same commodity rates should apply. Defendants, however, take the position that that is not prima facie evidence that the two commodities are entitled to the same commodity rates.

While coal-tar naphtha and petroleum naphtha may be interchangeable in their use as a solvent, defendants state that little of the latter is used for that purpose. They also state that petroleum naphtha is used extensively in internal-combustion engines, whereas coal-tar naphtha is not so used. They refer to the large volume of movement of petroleum naphtha within and from California, and to the fact that but six less-than-carload shipments of coal-tar naphtha moved between the points here considered within a period of two and one-half years. Defendants contend that that movement

is insufficient to warrant the establishment of commodity rates lower than those now in effect. The carload commodity rate applicable on coal-tar naphtha also applied on benzol, toluol, and xylol.

Complainant emphasizes the fact that the same carload rate on petroleum naphtha applies to Kramer, San Francisco, and Cole, Calif. The last two points named are 419 and 698 miles, respectively, north of Kramer. Complainant states that traffic passing through Kramer destined to San Francisco must be hauled over the Tehachapi Mountains, and when destined to Cole must be hauled over those mountains and the Shasta grades. Because of this complainant considers unreasonable the assessment of an arbitrary over Kramer on coal-tar naphtha destined to Johannesburg. As heretofore indicated, an arbitrary over Kramer is also applied to the rates on petroleum naphtha. Defendants state that the rate to San Francisco is influenced by competition of water carriers and of other rail routes; and that to obviate fourth-section departure the San Francisco rate is applied as maximum to intermediate points both north and south of San Francisco, inasmuch as available routes exist through those points to San Francisco. The distance over the short route to San Francisco is 1,447 miles and to Cole 1,638 miles.

Defendants contend that it is not unreasonable to refuse to extend the main-line rates to points on branch lines such as the Johannesburg branch. Complainant cites *United Verde Mining Co. v. A., T. & S. F. Ry. Co.*, 88 I. C. C. 5, wherein main-line class and commodity rates were applied to Clarkdale, Ariz., which is on a branch line. Defendants refer to the large volume of traffic moving over the Clarkdale branch as compared with that moving over the Johannesburg branch. On the latter one mixed-freight train makes a round trip three times per week.

We find that the rates assailed were not and are not unreasonable or otherwise unlawful. The complaint will be dismissed.

No. 15537¹RODNEY MILLING COMPANY *v.* MISSOURI PACIFIC
RAILROAD COMPANY

Submitted August 8, 1924. Decided October 31, 1924

Applicable rates on wheat, in carloads, shipped from various points in Kansas and Colorado to Atchison, Fort Leavenworth, and Leavenworth, Kans., and to St. Joseph, Mo., and milled in transit at Kansas City, Kans.-Mo., found unreasonable and unduly prejudicial. Reasonable rates prescribed for the future and reparation awarded on past shipments. Waiver of undercharges authorized.

E. H. Hogueland for Rodney Milling Company, and *C. J. Kucera* for Southwestern Milling Company, complainants.

H. H. Larimore for defendant.

REPORT OF THE COMMISSION

DIVISION 4, COMMISSIONERS MEYER, EASTMAN, AND POTTER
BY DIVISION 4:

These cases were presented under the shortened procedure. No exceptions were filed to the report proposed by the examiner.

Complainants are corporations milling flour and feed at Kansas City, Mo. By complaint they allege that the rates charged on wheat, in carloads, shipped in interstate commerce between August 2, 1921, and September 16, 1922, from stations in Kansas and Colorado to Atchison, Leavenworth, and Fort Leavenworth, Kans., and St. Joseph, Mo., were inapplicable, unreasonable, unduly prejudicial, and in violation of the long-and-short-haul provision of the fourth section. Reparation and the establishment of reasonable rates for the future are sought. Rates will be stated in cents per 100 pounds.

The shipments originated on defendant's line, those covered by the original complaint, in Kansas, and those by the subnumber, in Colorado. The wheat moved to Kansas City, Mo.-Kans., where it was milled into flour and feed, which was forwarded to Leavenworth, Fort Leavenworth, and Atchison, Kans., and to St. Joseph, Mo. Local rates to Kansas City, plus a proportional rate beyond of 5.5 cents prior to the reduction of January 1, 1922, and 4.5 cents thereafter, were charged.

¹ This report also embraces No. 15537 (Sub-No. 1), Southwestern Milling Company, Incorporated, *v.* Same.

During this period wheat could be moved from the same shipping points to mills on defendant's lines west of Kansas City, milled in transit, and then shipped through Kansas City to Atchison and the other destinations on the local rate from point of origin to destination. As the local rates to Atchison and the other destinations were the same as the local rate to Kansas City complainants were forced to pay rates higher than their competitors at the intermediate milling points by the amount of the proportional rates beyond Kansas City. It is contended for complainants that the tariffs also permitted transit at Kansas City, and accordingly their shipments were overcharged. They further contend that, if it should be found transit was not applicable at Kansas City, the rates assailed were unreasonable and unduly prejudicial as compared with the rates charged their competitors at the points having transit.

In support of the allegation that transit was permissible at Kansas City they refer to defendant's transit circular, which in item 35 provides generally for transit at points in direct line of shipment from and to points on defendant's lines. Kansas City is in direct line of shipment. Item 250 further provides for transit at Kansas City, Mo.-Kans., from points in Kansas to "Points in Missouri, Minnesota, Iowa, St. Louis, Mo., East St. Louis, Ill., Peoria, Chicago, Ill., and St. Paul, Minn., and points taking same rates." This is construed as authorizing transit at Kansas City on shipments to St. Joseph, Mo., and, as the other destinations are accorded the same rates as St. Joseph from nearly all Kansas points, it is contended that the item likewise authorizes the application of the through rate on such shipments. Defendant correctly points out that at the top of the page on which this item appears it is stated that "except as otherwise provided, transit privileges as described will be allowed as follows," and that, therefore, the effect of item 250 is governed by the preceding item 145, which specifically restricts the transit at Kansas City to shipments moving on through rates. This item states that transit—

will not be allowed at * * * Kansas City, Mo.-Kans., * * * on shipments destined to points * * * to which proportional rates are in effect from the transit station, except that transit privileges will be allowed as specified in Items Nos. 155 to 705, inclusive, or reissues, on basis of local rates (except as otherwise noted), point of origin to destination.

The fact that proportional rates were published from Kansas City to the ultimate destinations excludes that place as a transit point on shipments moving on a through rate, and, as complainant's shipments were stopped and milled at Kansas City, the proportional rates were not applicable. It follows that the shipments were undercharged wherever rates less than the combination of locals were

assessed to any of the destinations named. Accordingly, there are no fourth-section violations with respect to St. Joseph as alleged in the complaints. Complainant in the subnumber is in error in supposing the applicable combination basis to have been changed under the current transit circular by reference in item 145 to item 35.

Comparisons are made by complainant of the rates and earnings charged, with the through local rates and resulting earnings applicable between the same points on shipments milled in transit at various intermediate points west of Kansas City. Transit is allowed at nearly all milling points west of Kansas City, although the outbound movements are directly through Kansas City. These mills are in direct competition with complainant. Comparison is also made with the rates and earnings thereunder for similar distances from corresponding stations on the Union Pacific, which permits milling in transit on the through rate at Kansas City although the outbound movement is over the Chicago, Burlington & Quincy.

Evidence of defendant is restricted to showing that the applicable rates were assessed, and beyond urging that no change should be made in view of the long time the tariffs have been in effect, the other allegations were not defended. No reason appears why higher rates should be assessed from and to the points here under consideration on shipments milled at Kansas City than on shipments moving over the same route which have been milled at competitive stations west of Kansas City or on shipments milled at Kansas City and thence shipped to points in Missouri, Minnesota, and Iowa.

We find that the rates herein found applicable were, are, and for the future will be, unreasonable and unduly prejudicial to the extent that they exceeded, exceed, or may exceed the contemporaneous through rates from the points named to the same ultimate destinations, upon which milling in transit is allowed at points in Kansas west of Kansas City, Mo.-Kans.; that complainants made the shipments as described and paid and bore the charges thereon; that they have been damaged in the amount of the difference between the charges paid and those which would have accrued on the basis herein found reasonable; and that they are entitled to reparation, with interest. Complainants should comply with Rule V of the Rules of Practice. Defendants are authorized to waive the outstanding undercharges.

An order for the future will be entered.

No. 15521

OKLAHOMA PORTLAND CEMENT COMPANY v. ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY ET AL.

Submitted August 28, 1924. Decided October 21, 1924

Rates on steel grinding balls from Chrome, N. J., to Ada, Okla., found not unreasonable nor in violation of the aggregate-of-intermediates clause of the fourth section. Complaint dismissed.

E. W. Martindell and *Benedict & Phelps* for complainant.

Wm. Simmons, William C. McKenna, and Denegre, Leovy & Chaffe for defendants.

REPORT OF THE COMMISSION

DIVISION 4, COMMISSIONERS MEYER, EASTMAN, AND POTTER

BY DIVISION 4:

This case was presented under the shortened procedure. No exceptions were filed to the report proposed by the examiner.

Complainant, a corporation manufacturing and marketing Portland cement at Ada, Okla., alleges by complaint filed December 26, 1923, that the rates of \$1.485 and \$1.335 charged on two carloads of steel grinding balls shipped on February 23, 1922, and April 25, 1923, from Chrome, N. J., to Ada were unreasonable and in violation of the aggregate-of-intermediates clause of section 4 of the interstate commerce act to the extent that they exceeded \$1.085 and 97.5 cents, respectively. We are asked to prescribe a reasonable rate for the future and to award reparation. Rates are stated in amounts per 100 pounds.

The shipments moved as routed, from Chrome, via the New York & New Jersey Steamboat Company in New York City, thence Morgan Line to Galveston, Tex., and from there Gulf, Colorado & Santa Fe and Atchison, Topeka & Santa Fe to Ada. Fifth-class rates were charged on both shipments.

Complainant is basing its case on Agent Leland's tariff, I. C. C. 1400, under item 46, which provides for alternative application of maximum rates, whereby the rate to Deming, N. Mex., as published in transcontinental freight bureau westbound tariff I-T I. C. C. No. 1089 (R. H. Countiss, agent) will apply if lower than the rate to Ada. The Countiss tariff had a similar provision, and published a

rate of \$1, which later became 90 cents, from New York City to Clifton, Ariz., it being alleged that Deming is intermediate to this point and takes the same rate. The rate up to New York City over the New York & New Jersey Steamboat line was 10 cents at the date of the first shipment and 7.5 cents at the date of the second shipment, making total rates of \$1.10 and 97.5 cents. The \$1.085 sought in the complaint is computed on the theory that the rate to New York was 8.5 cents.

The alternative application of maximum rates, as provided in item 46 of Leland's tariff No. 1400, was first published in supplement 10, effective April 5, 1922, and was therefore not in effect at the time of the first shipment in February, 1922. The combination rate to Clifton and Deming was restricted to the route of the Southern Pacific Company, Atlantic Steamship Lines, via Galveston, in connection with the Southern Pacific Company via El Paso, Tex., and did not apply over the Santa Fe through Ada. The application of the tariff rule was contingent upon specific reference being made to it in connection with the rates to destinations in the tariff, and no such reference was made in connection with the rate to Ada. Deming was not intermediate to Clifton over this route and the through rate from point of origin to Deming was higher than the rate to Ada. These restrictive features were not removed until December 1, 1923, and since that date the interpretation has been that the Deming rate would apply to Ada, although that had not been the intention of the carriers.

Reference is made to the fact that upon application special permission was granted to the carriers to establish item 46 hereinbefore referred to upon less than statutory notice. Such permission has no effect upon the rates until they have been published and filed in accordance with the requirements of the act. The main purpose of the revision authorized was to remove fourth-section departures. There is no such departure at Ada over the Southern Pacific from New York to Deming via Galveston, and the Santa Fe does not participate in the rate from New York to Deming.

Defendants show that the rates are on a low basis and reflect the competition of the river crossings and the northern Atlantic ports and are not maximum reasonable rates. Mention is made of the fifth-class rate of \$1.535 to Texas common points, which is higher than the rate to Ada, but protected at present by fourth-section relief. The rate to Clifton was to meet competition with producers in Mexico who received grinding balls from foreign markets.

We find that the rates charged were properly applicable, not in violation of the aggregate-of-intermediates clause, nor unreasonable. The complaint will be dismissed.

No. 15765

HALE-HALSELL COMPANY v. KANSAS, OKLAHOMA & GULF RAILWAY COMPANY ET AL.

Submitted September 2, 1924. Decided October 31, 1924

Rate charged on one carload of toilet paper from Green Bay, Wis., to Muskogee, Okla., found unreasonable. Reparation awarded.

H. G. Struble for complainant.

R. H. Widdicombe and *H. H. Larimore* for defendants.

REPORT OF THE COMMISSION

DIVISION 4, COMMISSIONERS MEYER, EASTMAN, AND POTTER

BY DIVISION 4:

This case was presented under the shortened procedure. Exceptions were filed by defendant Chicago & North Western Railway to the report proposed by the examiner.

Complainant, a corporation, is a wholesale dealer in groceries, with headquarters at McAlester, Okla., and branches at Muskogee and other Oklahoma points. By complaint filed March 20, 1924, it alleges that the rate charged on one carload of toilet paper shipped on May 24, 1922, from Green Bay, Wis., to Muskogee, was unreasonable and unduly prejudicial. We are asked to prescribe a just and reasonable rate for the future and to award reparation, but the relief really sought is reparation only. Rates will be stated in cents per 100 pounds.

The shipment, weighing 24,015 pounds, moved over the Chicago & North Western to Council Bluffs, Iowa, Missouri Pacific to Okay, Okla., and the Kansas, Oklahoma & Gulf to destination. Charges of \$365.47 were collected at the applicable fifth-class rate of 94 cents and minimum of 38,880 pounds. The shipment was stopped in transit at Menasha, Wis., to complete loading, at a charge of \$7, which is not assailed. Subsequent to the movement, or effective June 15, 1922, a rate of 76 cents was established pursuant to *Minnesota & Ontario Paper Co. v. N. P. Ry. Co.*, 66 I. C. C. 571, upon which basis complainant seeks reparation.

The Missouri Pacific argues against the above basis, but concedes that inasmuch as in *Hale-Halsell Co. v. C., R. I. & P. Ry. Co.*, 93 I. C. C.

83 I. C. C. 313, reparation was awarded upon the basis of a rate of 83 cents on toilet paper from the same origin territory here in issue to McAlester, a point 62 miles farther distant than Muskogee, that basis might be proper here. The other defendants contend that reparation should be denied, upon the ground that the rates prescribed in *Minnesota & Ontario Paper Co. v. N. P. Ry. Co.*, *supra*, were in the nature of a general readjustment.

Following *Hale-Halsell Co. v. C., R. I. & P. Ry. Co.*, 83 I. C. C. 313, we find that the rate assailed was unreasonable to the extent that it exceeded 76 cents per 100 pounds; that the complainant made the shipment as described and paid and bore the charges thereon; that it was damaged thereby in the amount of the difference between the charges paid and those which would have accrued at the rate herein found reasonable; and that it is entitled to reparation in the sum of \$69.98, with interest.

An order awarding reparation will be entered.

93 I. C. C.

No. 15711

LANGE & CRIST BOX & LUMBER COMPANY v. BALTI-
MORE & OHIO RAILROAD COMPANY

Submitted October 2, 1924. Decided October 31, 1924

Rates on wire-bound box material, in carloads, applying via Clarksburg, W. Va., from origins on defendant's line in West Virginia to interstate destinations on its line, and defendant's failure to accord said commodity dressing-in-transit arrangements at Clarksburg, found unduly prejudicial. Undue prejudice ordered removed.

Charles Donley for complainant.

Charles R. Webber for defendant.

REPORT OF THE COMMISSION

DIVISION 4, COMMISSIONERS MEYER, EASTMAN, AND POTTER

BY DIVISION 4:

This case was presented under the shortened procedure. No exceptions were filed to the report proposed by the examiner.

Complainant is a corporation manufacturing box shooks and wire-bound box material at Clarksburg, W. Va. It is alleged that the rates on wire-bound box material, in carloads, applying via Clarksburg from origins on defendant's line in West Virginia to interstate destinations on its line are unduly prejudicial to that commodity and unduly preferential of box shooks and that defendant's failure to accord said commodity dressing-in-transit arrangements at Clarksburg is unduly prejudicial to complainant and unduly preferential of complainant's competitors at Cincinnati, Ohio, and other named points. The prayer is that defendant be required to establish nonprejudicial rates and transit arrangements.

An allegation of unjust discrimination is also made but requires no discussion, as there is no showing of discrimination between shippers in the same community. *Dean Mill Co. v. M. P. R. R. Co.*, 80 I. C. C. 174.

Wire-bound box material consists of flat pieces of lumber dressed into size and shape for the different faces of a box and stitched together with wire. The only difference between wire-bound box material and box shooks is that the latter are nailed together. The

through rates on lumber, including box shooks, from points in West Virginia to interstate destinations on defendant's line do not apply on wire-bound box material. There has been no necessity for such application heretofore. In *Rates on Lumber and Lumber Products*, 52 I. C. C. 598, we found that the carriers should provide rates on wire-bound box material not in excess of the rates on lumber contemporaneously maintained between the same points.

Under defendant's dressing-in-transit arrangements lumber may be converted into wire-bound box material at Cincinnati, Ohio, where complainant's principal competitors are located, and the through rate on the box material, which takes lumber rates, applied from point of origin to ultimate destination, plus a transit charge of 2.5 cents per 100 pounds, minimum \$7.50 per car. For example, complainant shows that through rates ranging from 41 to 47 cents per 100 pounds, plus the transit charge, would apply on such traffic from Brewton, Ala., to destinations in Pennsylvania, Maryland, New York, and New Jersey, while combination rates ranging from 72.55 to 77.6 cents per 100 pounds would apply on corresponding traffic via Clarksburg.

Complainant refers to points on other lines where transit is permitted on wire-bound box material. But the mere fact that defendant participates in joint rates in connection with which transit is allowed at other points off its line does not make it guilty of undue prejudice against Clarksburg. *Central R. R. Co. v. United States*, 257 U. S. 247. Defendant contends that we can not make any order in this case affecting traffic moving from origins or to destinations on other lines. This contention is without merit. Transit arrangements are treated as matters local to the line on which the transit point is situated. *C. R. R. Co. v. United States, supra*. The tariffs naming the joint rates via both Cincinnati and Clarksburg contain the usual omnibus rule. The transit arrangements at Cincinnati are not restricted to traffic from and to points on defendant's line, but by virtue of the omnibus rule also apply on such traffic from and to points on such other lines as take joint rates via Cincinnati in connection with defendant's line. All that complainant asks with respect to transit is that defendant publish and maintain corresponding arrangements at Clarksburg.

We find (1) that the rates on wire-bound box material, in carloads, applying via Clarksburg, W. Va., from origins on defendant's line in West Virginia to interstate destinations on its line are, and for the future will be, unduly prejudicial to the extent that they exceed the rates contemporaneously applicable on box shooks, in carloads, via Clarksburg from the same origins to the same destinations, and (2) that defendant's failure to accord dressing-in-transit arrange-

ments to wire-bound box material at Clarksburg, while according said commodity such arrangements at Cincinnati, Ohio, is, and for the future will be, unduly prejudicial to complainant and unduly preferential of complainant's competitors at Cincinnati. If defendant should elect to remove the undue prejudice with respect to transit by according such arrangements to wire-bound box material at Clarksburg, it should, of course, subject such arrangements to no greater restriction or less favorable terms and conditions than those in effect in connection with said commodity at Cincinnati.

An appropriate order will be entered.

INVESTIGATION AND SUSPENSION DOCKET No. 2193

BRICK BETWEEN OKLAHOMA AND TEXAS POINTS

Submitted October 6, 1924. Decided October 31, 1924

Proposed schedules changing the basis for computing distance for the application of rates on brick between Oklahoma and Texas and between Oklahoma and Arkansas, found not justified. Suspended schedules ordered canceled and proceeding discontinued.

J. M. Strupper for respondents.

Rogers McCray, D. P. Harris, jr., Homer J. Conley, and A. B. Hamilton for protestants.

REPORT OF THE COMMISSION

DIVISION 4, COMMISSIONERS MEYER, EASTMAN, AND POTTER

MEYER, Commissioner:

By schedules filed to become effective July 27, 1924, and later dates, respondents propose to change the basis for computing distance for the application of mileage commodity rates on brick and articles taking the same rates, in carloads, between points in Oklahoma and Texas and between points in Arkansas and Oklahoma. Upon protest of the McCray Freight Traffic Company of Kansas City, Mo., on behalf of various brick-manufacturing concerns in Missouri and Oklahoma, the Acme Brick Company, the Reliance Brick Company of Texas, and the Builders Material Company of Muskogee, Okla., the schedules have been suspended until December 24, 1924.

The schedules now in effect provide that in computing rates, distances to be used shall be based on distances over direct lines, embracing as a maximum lines or parts of lines of not more than three carriers via existing connections for the interchange of carload traffic, except that in cases where four or more lines are necessary, rates are to be figured on basis of the minimum number of lines. The proposed schedules restrict the basis for computing rates to the distances over routes embracing as a maximum lines or parts of lines of not more than three carriers, without exception.

In justification of the proposed schedules respondents state that they have put into effect the scale of rates prescribed in *Memphis-Southwestern Investigation*, 77 I. C. C., 473, 512, and urge that they ought therefore also to use the formula for computing distances

which was prescribed in a supplemental order amending the original order in that case, reading as follows:

* * * In determining the rates prescribed herein the distances to be used shall be the distances over direct routes, embracing as a maximum the lines or parts of lines of no more than three carriers not under common ownership and control, via existing connections for the interchange of traffic.

Protestants object to the proposals on the ground that increases in rates, in some instances exceeding 10 per cent, will result to certain destinations in Texas to which the short-line distances from Oklahoma are now figured over four or more lines. They point out that Texas intrastate rates are figured by the use of routes embracing more than three lines, and that they meet competition of traffic subject to the Texas rates. As an example of some increases which would result, the short-line distance from Pawhuska, Okla., to Coolidge, Tex., over routes embracing more than three lines is 420 miles, resulting in a rate of 19 cents, while over routes embracing three lines the distance is 469.4 miles, and because the scale does not apply for distances in excess of 450 miles, it would be necessary to apply a group rate of 35 cents. There are other points between which the distance over routes embracing three lines would be greater than 450 miles and where it would be necessary to apply combination rates. There are also instances where there is no three-line route from origin to destination, and higher group rates or combination rates would apply. The points affected are generally located on short lines, but there are many short lines in Texas and Oklahoma, and the total business affected would be considerable.

The territory within which these rates apply was not covered by our order in the *Memphis-Southwestern Investigation, supra*. It has been generally urged that the establishment of a uniform basis throughout this territory is desirable. The scale is already in effect, but carriers are attempting now to limit and restrict its application. Rates applicable between points in Texas are not similarly limited, nor are the schedules on other commodities. In prescribing this scale, we did not condemn the use of routes embracing four lines if the carriers saw fit to extend the application of rates to include such routes. Respondents have not attempted to show that any discrimination would result if the proposed rule is not allowed to become effective. If the proposed schedules should become effective increases would result which have not been justified.

The protestants suggest that a uniform formula be put into effect in this territory similar to that prescribed in *Iola Cement Mills Traffic Asso. v. A. W. Ry. Co.*, 87 I. C. C. 451. In that case an exception to the three-line basis was required providing that where by the use of four lines the mileage via three lines is reduced not less

than 30 miles, or where by the use of five lines the mileage via four lines is reduced by not less than 30 miles, the mileage of the four or five lines will be used to determine the rate, with the proviso that a mileage via five lines can only be used when there is a mileage via four lines at least 30 miles less than via three lines and then only where the mileage via five lines is at least 30 miles less than via four lines. The record does not warrant us in prescribing this basis in connection with the rates here considered.

We find that the proposed schedules have not been justified. An order will be entered requiring their cancellation and discontinuing the proceeding.

93 I. C. C.

No. 14956

SOUTHLAND COTTON OIL COMPANY v. MISSOURI, KANSAS & TEXAS RAILWAY COMPANY ET AL.

Submitted May 22, 1924. Decided October 27, 1924

Rate on steel tanks, knocked down, in carloads, from Hopewell, Va., to Oklahoma City, Okla., found unreasonable. Reparation awarded.

H. D. Driscoll and *H. E. Ketner* for complainants.

C. S. Burg for defendants.

REPORT OF THE COMMISSION

DIVISION 1, COMMISSIONERS McCHORD, LEWIS, AND McMANAMY

BY DIVISION 1:

This case was presented under the shortened procedure. Exceptions were filed by complainant to the report proposed by the examiner and the case was orally argued. Our conclusion differs from that recommended by the examiner.

Complainant, a corporation manufacturing cottonseed products at Paris, Tex., by complaint seasonably filed, alleges that the rate of \$1.485 charged on two carloads of steel tanks, knocked down, shipped February 21, 1922, from Hopewell, Va., to Oklahoma City, Okla., was unreasonable to the extent that it exceeded \$1.095. Reparation only is sought. Rates are stated in amounts per 100 pounds.

The shipments moved over the Norfolk & Western to Cincinnati, Ohio; Cleveland, Cincinnati, Chicago & St. Louis thence to St. Louis, Mo.; and the Missouri, Kansas & Texas beyond, 1,562 miles. Charges were collected at the applicable fifth-class rate of \$1.485, minimum 36,000 pounds. Effective June 15, 1922, defendants established a commodity rate of \$1.095. Under *Reduced Rates, 1922*, the latter rate became 98.5 cents. Effective September 15, 1922, the present rate, 95.5 cents, was established.

In support of its contention complainant urges that the commodity in question usually moves on commodity rates lower than the fifth-class rate and that defendants recognized that principle when they subsequently established the commodity rate of \$1.095. The following table compiled from statements submitted by complainant compares the earnings per car, per car-mile, and per ton-mile under the

rate attacked, and the commodity rate subsequently established, with average earnings under contemporaneous rates in effect from Hopewell to Oklahoma City on 14 commodities including, among others, iron and steel articles, as well as other commodities. The revenues per car-mile and per ton-mile are computed on the basis of the short-line distance of 1,376 miles, and minimum of 36,000 pounds on tanks. The minima on the other commodities were 14,000, 24,000, 30,000, and 36,000 pounds.

Commodity and period	Rate per 100 pounds	Earnings per car	Earnings per car- mile	Earnings per ton- mile
Steel tanks, knocked down:			<i>Cents</i>	<i>Mills</i>
Prior to June 15, 1922.....	¹ \$1.485	\$534.60	39.0	21.6
June 15 to 30, 1922.....	² 1.095	394.20	28.7	15.9
Average on 14 other commodities:				
Jan. 1 to June 30, 1922.....	1.255	375.25	27.2	18.2

¹ Applicable fifth-class rate.

² Commodity rate subsequently established.

While the revenue per car and per car-mile are based upon the minimum of 36,000 pounds, one car weighed 72,000 pounds, or double the prescribed minimum, and the other 48,700 pounds.

Complainant also submits the following table showing the rate on steel tanks, knocked down, in carloads, from Hopewell to Oklahoma City, compared with the rate on the same commodity from Pittsburgh district to Oklahoma City for the same periods:

Period	From Hope- well	From Pittsburgh district
Jan 1, 1922, to June 14, 1922.....	\$1.485	\$1.135
June 15, 1922, to June 30, 1922.....	1.095	1.135
July 1, 1922, to Sept. 14, 1922.....	.985	1.02
On and after Sept. 15, 1922.....	.955	1.02

Complainant points out that during the period January 1 to June 30, 1922, the rate on steel tanks, knocked down, from Hopewell to Texas common points was \$1.265, for distances of from 1,271 miles to 1,673 miles, yielding average car-mile earnings of 31.5 cents and average ton-mile earnings of 17.5 mills. It is stated that in many instances shipments to Texas would move through Oklahoma City.

Defendants contend that the route of movement was not via Oklahoma City to Texas common points; that the shipments were isolated; that in *Pure Oil Co. v. Director General*, 64 I. C. C. 444, the fifth-class rate from Cushing, Okla., to St. Louis, Mo., on iron tanks, knocked down, in carloads destined to Central City, Ohio, and Morgantown, W. Va., was found not unreasonable, and that

that case was followed in *Indiahoma Refining Co. v. Director General*, 74 I. C. C. 392, in which the fifth-class rate on secondhand plate-steel tank material, knocked down, from Bristow, Okla., to East St. Louis was found not unreasonable. The facts in the cases cited differ from those presented in the instant case.

We find that the rate assailed was unreasonable to the extent that it exceeded \$1.095 per 100 pounds; that complainant made the shipments as described, and paid and bore the charges thereon; that it has been damaged in the amount of the difference between the charges paid and those which would have accrued at the rate herein found reasonable; and that it is entitled to reparation, with interest. Complainant should comply with Rule V of the Rules of Practice.

COMMISSIONER LEWIS dissents.

93 I. C. C.

No. 14545

WEST VIRGINIA RAIL COMPANY *v.* PENNSYLVANIA
RAILROAD COMPANY ET AL.

Submitted May 24, 1924. Decided October 27, 1924

Rates on steel billets from South Kearney, N. J., Baltimore, Md., and Philadelphia, Pa., to Huntington, W. Va., found not unreasonable or unduly prejudicial. Complaint dismissed.

W. P. Tingley for complainants.

William Meade Fletcher, jr., and Charles R. Webber for defendants.

REPORT OF THE COMMISSION

DIVISION 1, COMMISSIONERS McCHORD, LEWIS, AND McMANAMY
BY DIVISION 1:

Exceptions were filed by defendants to the report proposed by the examiner, and the issues were orally argued before us. Our conclusions differ from those proposed by the examiner.

Complainant, a corporation, engaged at Huntington, W. Va., in manufacturing light steel rails, by complaint filed December 11, 1922, alleges that the rates charged on 194 carloads of steel billets from South Kearney, N. J., 10 carloads from Canton (Baltimore), Md., and 11 carloads from Philadelphia, Pa., to Huntington, shipped November 15, 1921, and on subsequent dates, were unjust, unreasonable, and unduly prejudicial. Reparation and just and reasonable rates for the future are sought. Rates will be stated in amounts per ton of 2,240 pounds.

Huntington is on the main line of the Chesapeake & Ohio and the Ohio River division of the Baltimore & Ohio. It is 161 miles east of Cincinnati, Ohio, and 281 miles southwest of Pittsburgh, Pa. It has a population of approximately 50,000.

Complainant uses billets for rolling light steel rails. All of these shipments appear to have moved prior to the general rate reduction of 1922. The rates charged and applicable were commodity rates of \$8.60 from South Kearney, \$8.20 from Philadelphia, and \$8 from Baltimore. Reparation is sought upon basis of rates of \$7.84, \$7.44, and \$7.24, respectively. When the general rate reductions of 1922 were effected these rates were reduced slightly beyond the extent required, but on November 1, 1923, subsequent to the hearing in this

proceeding, they were increased to \$7.80, \$7.40, and \$7.20, respectively, which rates are now in effect.

Steel billets are rated sixth class in the official classification. The rates applied, while published as commodity rates, are based upon the sixth-class rates, the equivalent of the sixth-class rate on a ton of 2,000 pounds having been made applicable on a ton of 2,240 pounds. This basis is also employed in making commodity rates to Chicago. Class rates from New York to central territory are arrived at by assigning to each of the various groups in this territory a percentage, based upon distance, which percentage when applied to the New York-Chicago rate determines the group rate. A description in detail of this system of rate making is given in *Michigan Percentage Cases*, 47 I. C. C. 409. Huntington, originally in the 87 per cent group, was accorded the 82 per cent basis by our decision in *Jobbers' & Mfrs.' Bureau of Huntington v. A. C. R. R. Co.*, 57 I. C. C. 64, decided February 11, 1920, and its sixth-class rates were at the time of movement of these shipments, and now are, made 82 per cent of the New York-Chicago rate. South Kearney is a New York rate point. Rates from Philadelphia and Baltimore are made differentially under the New York rate, and therefore for the purposes of this report discussion of the New York rate will suffice. The commodity rates applied on these shipments, as well as those now in effect, are substantially 82 per cent of the contemporaneous rates to Chicago.

Complainant's principal contention is that the rates assailed are unreasonable and unduly prejudicial to the extent that they exceed 82 sixtieths of the rates to Pittsburgh, relying upon *Jobbers' & Mfrs.' Bureau case*, *supra*, and *West Virginia Rail Co. v. P. R. R. Co.*, consolidated therewith and disposed of in the same report. Pittsburgh is in the 60 per cent group. The *Jobbers' & Mfrs.' Bureau case* assailed class and commodity rates between Huntington and points in trunk-line and New England territories, and the *West Virginia Rail Co. case* assailed the rates on certain carloads of old steel rails from points in trunk-line territory, including New York, Philadelphia, and Baltimore, to Huntington. In disposing of the issues in the former case we said:

We * * * find that the 87 per cent basis as applied to Huntington's traffic results in unreasonable and unduly prejudicial charges, and that the proper basis for the future is 82 per cent, subject to the qualification that the rates to and from the ports may be observed as minima at interior points where the haul is greater than to or from the ports. We approve the policy of according Huntington specific rates on certain important commodities as to which there is keen competition between Huntington and other cities in the same general territory, but our finding herein must not be understood as affording any authority for increasing the commodity rates.

In referring to the rates on old steel rails assailed in the latter complaint it was said:

As to docket No. 9808, West Virginia Rail Company v. Pennsylvania Railroad Company et al., we find that the rates assailed were unreasonable and unduly prejudicial, and that the New York-Huntington rate should not have exceeded 82 per cent of the New York-Chicago rate, subject to the qualification already stated in connection with our finding respecting class and commodity rates, and should have been related to the New York-Pittsburgh rate as 82 is to 60. Properly related rates should have been provided from the Atlantic seaboard ports and from interior points. Since the Director General is not a party defendant and the rates initiated by him are not herein involved, no order for the future as to Docket 9808 will be entered.

Following the decision in these proceedings, Huntington has since been accorded rates on classes and commodities made 82 per cent of the New York-Chicago rates.

It is complainant's contention that since billets and old steel rails ordinarily take the same rates, the finding therein that the rates on the latter commodity from New York to Huntington should be related to the rates from New York to Pittsburgh as 82 is to 60, amounts to a finding that rates on billets from New York to Huntington which bear a higher percentage relationship to the Pittsburgh rates are unreasonable and unduly prejudicial. Complainant shows that the transportation characteristics of billets and of old steel rails are practically the same. It says that when purchasing these billets it assumed that the rates thereon would be 82 sixtieths of the Pittsburgh rate, and that when it learned that this was not the case it sold about 6,000 tons which it had purchased in the East, some of it without profit, rather than ship them to Huntington under the rates assailed. It asserts that in the purchase of billets it is obliged to meet the competition of manufacturers at many points, including Pittsburgh, who buy them for rerolling or remelting purposes, and that therefore the freight rate is an important factor in the purchase of this commodity.

Defendants show that while the rates assailed were substantially 82 per cent of the New York-Chicago rates, they were not 82 sixtieths of the Pittsburgh rate for the reason that the Pittsburgh rate was not made on a basis of 60 per cent of the New York-Chicago rate. It appears that many years ago, because of the keen competition in the purchase and sale of certain iron and steel articles, including billets, the commodity rate thereon from New York to Buffalo, N. Y., which was the same as the sixth-class rate, was made applicable also to Pittsburgh. This rate, being thus depressed below its normal basis, they claim is not a proper measure of the reasonableness of the rates from New York to Huntington. In this connection they state that rates from Philadelphia and Balti-

more based on that rate were made higher than would result from use of the ordinary differentials.

The case relied upon by complainant does not support its contention. The finding in that case contemplated rates to Pittsburgh made on the basis of 60 per cent of the New York-Chicago rate. There is nothing in that report which discloses that the New York-Pittsburgh rates were made other than on the 60 per cent basis. Furthermore, as stated in *General Chemical Co. v. B. & O. R. R. Co.*, 83 I. C. C. 582, a case involving commodity rates not conforming to the percentage basis:

We have repeatedly found that the matters to be considered were rather the earnings and transportation conditions, regardless of the percentage formula.

As indicating that the rates assailed were unreasonable, complainant refers not only to commodity rates on billets from New York to points in the Pittsburgh or 60 per cent group which are lower than sixth class, but also to rates from Williamsport, Pa., to Pittsburgh group points, from Titusville, Pa., to Cleveland and Youngstown, Ohio, from Buffalo to a number of Ohio points, and between certain points in Pennsylvania, which similarly are lower than sixth class. Commodity rates on copper bars, cakes, and ingots, on pig and antimonial lead, and on pig and slab zinc, from New York to the Pittsburgh group are also on a basis lower than sixth class, as are rates on billets from New York to Virginia cities. Rates on tin and terne plate, rated sixth class in the governing southern classification from New York to Virginia cities, lower than the class rates are also cited.

With respect to the rates referred to on copper, lead, and zinc, defendants point out that rates on those commodities lower than the class rates are likewise accorded to Huntington. They assert that the rates cited applying from New York to Virginia cities are depressed by reason of water competition. It is shown that only to the Pittsburgh group do the commodity rates on billets from the points of origin here considered to central territory destinations differ from the sixth-class rates by more than a few cents.

The ton-mile earnings under the rates assailed compare favorably with the earnings under the rates to other central-territory destinations. Thus, the rates in effect at the time of movement of these shipments, the ton-mile earnings, and the distances from New York to representative points are shown of record as follows: To Huntington, rate \$8.60, earnings 13.2 mills, distance 650 miles; Columbus, Ohio, \$8.19, 13.2 mills, 619 miles; Bellefontaine, Ohio, \$8.60, 12.8 mills, 672 miles; Xenia, Ohio, \$8.80, 13.1 mills, 674 miles; Cincinnati, Ohio, \$9.10, 12.3 mills, 739 miles; Chicago, \$10.50, 11.7 mills,

896 miles. To Pittsburgh the rate was \$5.74, the earnings 13.4 mills, and the distance 428 miles.

Defendants assert that the percentage basis is seldom followed in making commodity rates to Pittsburgh. They show that of 96 commodity rates applying from New York to Pittsburgh when these shipments moved, 70 were higher than would obtain by application of the 60 per cent group basis, 8 were lower, and 18 were on the percentage basis. The eight which were lower covered iron and steel articles and raw materials used by the iron and steel trade, including ground anthracite coal. Defendants rely upon this as demonstrating that the rates on billets to Pittsburgh are depressed below a normal level for commodity rates. Of 97 commodity rates from New York to Huntington, only 21 were higher than would obtain by application of the 82 per cent group basis, 4 were lower, and 72 were on the percentage basis. Substantially the same situation exists at present as to both destinations.

Defendants assert that if the New York-Huntington rate is reduced to 82 sixtieths of the present Pittsburgh rate and the same principle is applied on other rates to Huntington it will result in increases in 70 out of 96 commodity rates from both Philadelphia and Baltimore to Huntington, and will constitute a reversal of policy of the carriers by making Pittsburgh instead of Chicago the key rate. It would also result in a rate to Huntington on the shipments here considered which, instead of 82 per cent, would be 74.6 per cent of the New York-Chicago rate, and would be lower than the rates to points in 76 per cent, 78 per cent, and 80 per cent groups, and the rate to Huntington would produce lower ton-mile earnings than the rates to other points in central territory for like distance. The complainant has a competitor at Newark, Ohio, a 76 per cent rate point, 586 miles from New York, but complainant's rate under its proposed adjustment would be lower than that of its competitor.

Witness for the Pennsylvania stated that an examination of its records failed to disclose any movement of billets from South Kearney or Baltimore to Pittsburgh or Huntington subsequent to the shipments here considered, and witness for the Baltimore & Ohio made a similar statement with respect to traffic over its lines from Philadelphia and Baltimore. The record indicates that complainant generally buys its billets at points of supply nearer to Huntington.

We find that the rates assailed were not and are not unreasonable or unduly prejudicial. The complaint will be dismissed.

COMMISSIONER McCHORD dissents.

No. 14278

MIAMI COPPER COMPANY v. ARIZONA EASTERN RAIL-
ROAD COMPANY ET AL.

Submitted May 26, 1924. Decided October 27, 1924

Rate charged between August 10 and September 22, 1921, inclusive, on numerous tank-car loads of crude and fuel oils from Gainesville, Tex., to Miami, Ariz., found not unreasonable. Complaint dismissed.

Arthur B. Hayes for complainant.

F. H. Wood, J. R. Bell, Elmer Westlake, James E. Lyons, and
F. W. Mielke for defendants.

REPORT OF THE COMMISSION

DIVISION 1, COMMISSIONERS McCHORD, LEWIS, AND McMANAMY

By DIVISION 1:

Exceptions were filed by defendants to the report proposed by the examiner, and the case was orally argued. Our conclusions differ from those recommended by the examiner.

Complainant, a corporation engaged in mining and reducing copper ores at Miami, Ariz., alleges by complaint filed September 23, 1922, that the rate of 59.5 cents collected between August 10 and September 22, 1921, inclusive, on numerous tank-car loads of crude and fuel oils shipped from Gainesville, Tex., to Miami was unreasonable. The prayer is for reparation only. Rates are stated in cents per 100 pounds except where otherwise noted.

Miami is on the Arizona Eastern, a subsidiary of the Southern Pacific, 1,013 miles from Gainesville via the short-line route of the Gulf, Colorado & Santa Fe to Fort Worth, Tex., the Texas & Pacific to El Paso, Tex., the Southern Pacific to Bowie, Tex., and the Arizona Eastern beyond. Part of the shipments moved over the short-line route, the remainder over routes approximating 1,300 miles. Charges were collected at the applicable commodity rate of 59.5 cents. Effective November 15, 1921, that rate was reduced to 50 cents, to which basis complainant seeks reparation.

The history of the crude and fuel oil rates from Gainesville and other Texas points grouped therewith to Miami shows that on February 1, 1917, the rate of 78 cents theretofore in effect was reduced to 59 cents. This reduction resulted from a realignment

of the rates from Texas points into Arizona to conform with the rates found reasonable from Bakersfield and Los Angeles, Calif., to Arizona points named in *Pacific Creamery Co. v. S. P. Co.*, 42 I. C. C. 93. This rate, which was but 0.5 cent under the rate assailed, was increased on August 10, 1918, to 63.5 cents under freight-rate authority No. 96 of the Director General of Railroads by which a 4.5-cent flat increase was made applicable on petroleum oil and its products in lieu of the 25 per cent increase provided by General Order No. 28. On November 20, 1919, the 63.5-cent rate was reduced to 44.5 cents by voluntary action of the carriers. The latter rate became 59.5 cents on August 26, 1920, under the general increase authorized in *Ex parte 74*. Again by voluntary action of the carriers the 59.5-cent rate was reduced on November 15, 1921, to 50 cents.

The primary reason actuating complainant in filing this complaint appears to be the fact that the 50-cent rate was established on August 10, 1921, from 23 south Texas points to Miami, and was not extended to north Texas producing points until November 15. The mere fact, however, that a shipper at some other point may have obtained a reduction in his rate prior to the date complainant obtained a like reduction does not prove that the rate paid by complainant was unreasonable. *Wofford Oil Co. v. Director General*, 66 I. C. C. 509.

Witness for defendants states that the 50-cent rate was published at the solicitation of oil-burning smelters at Miami and Globe, Ariz., which represented that under the depressed conditions then prevailing in the copper industry it was necessary to obtain a low rate on Mexican crude oil to take the place of California oil, the production of which was at that time declining rapidly. The carriers intended, according to this witness, to publish the 50-cent rate as an import rate, but through error it was published as a domestic rate. Complaint by north Texas and Oklahoma producers resulted in the subsequent blanketing of the rate from points in that territory.

Two exhibits submitted by complainant show rates as of November 15, 1921, on crude oil of \$10 per net ton, equivalent to 50 cents per 100 pounds, from numerous north Texas and Kansas points to Miami. However, during the period complainant's shipments moved the rates from the Oklahoma points were 59.5 cents, while from the Kansas points combination rates ranging from 73.5 cents to 77 cents applied. Other comparisons by complainant show rates from Beaumont, Galveston, Gainesville, and other Texas points of \$8.50 per net ton to Douglas, Ariz., \$8.90 per net ton to Bisbee, Ariz., \$10.70 per net ton to Clifton, Ariz., and \$8.90 per net ton to Cananea.

Mexico. These rates defendants contend are not comparable because they were originally constructed by the El Paso & Southwestern, a subsidiary of the Phelps Dodge Corporation which operates smelters on the line of that carrier, adding an amount approximating 1 cent per ton-mile to cover the 216-mile haul from El Paso to Douglas to the low Texas intrastate blanket rate of \$3.30 per net ton to El Paso. Also, complainant seeks to show, by a comparison based on the ton-mile yield returned under the contemporaneous rate of \$8.60 per net ton from Bakersfield to Miami, that the rate from Gainesville should not have exceeded 50 cents. This comparison, however, overlooks the fact that the rate from Bakersfield to Miami was established on a basis lower than we prescribed in *Pacific Creamery Co. v. S. P. Co.*, 34 I. C. C. 586.

We find that the rate charged was not unreasonable. The complaint will be dismissed.

COMMISSIONER McCHORD dissents.

93 I. C. C.

No. 12596

PRESSED STEEL CAR COMPANY *v.* DIRECTOR GENERAL,
AS AGENT, BALTIMORE & OHIO RAILROAD COMPANY,
ET AL.

Submitted May 19, 1924. Decided October 27, 1924

Rates to and from points of unloading and loading at complainant's plants at McKees Rocks and Allegheny, Pa., found not to have been unreasonable. No damage to complainant shown from any undue prejudice which may have existed. Complaint dismissed.

Walter, Burchmore, Collin, & Belnap for complainant.

John F. Finerty and *M. G. de Quevedo* for Director General of Railroads, as agent.

REPORT OF THE COMMISSION

DIVISION 1, COMMISSIONERS McCHORD, LEWIS, AND McMANAMY
BY DIVISION 1:

Exceptions were filed by complainant to the report proposed by the examiner and the case was orally argued.

Complainant is a corporation engaged in the manufacture of railroad cars, passenger and freight, and car parts. By complaint filed February 28, 1921, it is alleged that the rates charged complainant for the transportation of inbound shipments of iron, steel, coal, lumber, machinery, and other commodities, and outbound new and repair cars, car trucks, car parts, and miscellaneous commodities from and to complainant's plants since February 15, 1918, were, are, and for the future will be, unjust, unreasonable, unduly preferential, and unduly prejudicial to the extent that they exceeded, exceed, or may exceed the rates to and from the Pittsburgh district. Before the hearing the corporate defendants satisfied the complaint against them. Complainant now seeks reparation only against the Director General of Railroads, as agent, hereinafter called the defendant, and the Pittsburgh, Allegheny & McKees Rocks Railroad. The Pittsburgh, Allegheny & McKees Rocks Railroad is nominally a defendant but in interest a complainant. Except as noted, rates will be stated in cents per net ton of 2,000 pounds. Rates on new and repair cars will refer to cars on their own wheels.

Complainant's plants are located at McKees Rocks and Allegheny, Pa., on opposite sides of the Ohio River, the former about 3.5 miles from the Pittsburgh & Lake Erie passenger station in Pittsburgh, Pa., and the latter 3 or 4 miles from the Pennsylvania passenger station and within the city limits of Pittsburgh. Complainant's plants are served by the Pittsburgh, Allegheny & McKees Rocks Railroad, hereinafter called the P., A. & McK., a terminal and switching carrier owned by the complainant and held to be a common carrier engaged in interstate commerce in *P., A. & McK. R. R. Co. v. Director General*, 57 I. C. C. 1. Following that case, the P., A. & McK. failed to agree with the trunk lines upon a division of through rates or an absorption of switching charges, and a supplemental complaint was filed asking us to prescribe such divisions or absorptions and to award reparation. In the latter case we found that there were no joint rates to divide and that we could not properly require defendants to absorb increased portions of the P., A. & McK. switching charges, and there being no prayer for the establishment of joint rates, we dismissed the complaint. *P., A. & McK. R. R. Co. v. Director General*, 69 I. C. C. 223.

The defendant contends that the P., A. & McK. was not at any time under Federal control and that our jurisdiction of intrastate shipments is limited to the movement over lines under Federal control, citing *Electric Coal Co. v. Director General*, 60 I. C. C. 683, and *Fairfield Lumber & Coal Co. v. Director General*, 69 I. C. C. 87. By letter dated June 25, 1918, the director general notified the P., A. & McK. that, in order to remove any doubt as to its status, it was definitely relinquished. Complainant does not contend that the P., A. & McK. was under Federal control but contends, nevertheless, that we have jurisdiction of intrastate shipments, relying on *Jones & Laughlin Steel Co. v. Director General*, 60 I. C. C. 325, and *Carnegie Steel Co. v. Director General*, 80 I. C. C. 269. In both of these cases intrastate rates were found unreasonable and reparation awarded on intrastate shipments where the carriers whose switching charges were partially absorbed were not under Federal control. The latter case has been reopened. Complainant contends that the absorption of terminal charges was equivalent to a joint rate, and that we have jurisdiction of the entire transportation. In neither of the cases cited by the defendant was there a joint rate in effect. Our jurisdiction of intrastate rates to and from the junction points with the P., A. & McK. is unquestioned.

The manner in which the corporate defendants satisfied the complaint against them is worthy of note. It was agreed to make

reparation upon the basis of an absorption of 10 cents per ton and publish that absorption for the future. Under this agreement reparation without interest was paid to complainant on the following basis:

Period	Switching charges of P., A. & McK.		Absorption by trunk lines		Reparation agree- ment	
	In effect	Agreed upon	In effect	Agreed upon	By P., A. & McK.	By trunk lines
	<i>Cents</i>	<i>Cents</i>	<i>Cents</i>	<i>Cents</i>	<i>Cents</i>	<i>Cents</i>
Mar. 1, 1920, to Aug. 25, 1920-----	10	10	4.27	10	0	5.73
Aug. 26, 1920, to June 30, 1922-----	14	10	16	10	4	4
July 1, 1922, to Sept. 30, 1922-----	¹ 12.5	10	² 5.5	10	2.5	4.5

¹ The published absorption was 5.5 cents to and from certain territories.

² The published rate was 13 cents, but should have been 12.5 cents under the formula prescribed for reducing rates in *Reduced Rates, 1922*, 68 I. C. C. 676.

³ The published absorption during this period was 5 cents instead of 5.5 cents on most of the trunk lines.

No reparation was made on new and repair cars. The terms of this settlement were submitted to us in November, 1922, and the settlement was approved upon the condition that a detailed statement of the amounts paid be submitted.

A reparation settlement was also agreed upon between complainant and the director general under the terms of which the complainant was to receive reparation, without interest, in the sum equivalent to the amount paid by it in excess of the flat Pittsburgh rate, namely, 5.73 cents per ton on all traffic to and from its plant, exclusive of new and repair cars. The 5.73 cents per ton was to be apportioned 4 cents payable by the director general and 1.73 cents payable by the P., A. & McK. Accordingly an application on the informal docket was made, requesting authority for the payment of reparation to the complainant in the sum of \$54,671.61 on 32,608 carloads, aggregating 1,366,791.34 tons. This authority was denied pending a hearing upon the formal complaint in the instant case. Since that time the claim with respect to 14,393.3 tons of billets, which belonged to the United States Government, has been withdrawn, it being ascertained that the unabsorbed portion of the charges of the P., A. & McK., amounting to \$824.74 on these shipments, was paid by the United States Government.

The shipments upon which reparation is now sought moved from February 15, 1918, to February 29, 1920, both inclusive. The points of origin and destination of the shipments are not shown. Some of the shipments were intrastate and some were interstate. Some of the shipments moved between complainant's plants and points within the Pittsburgh district. Some of the shipments contained a number of less-than-carload lots loaded in one car. Charges were

collected by the P., A. & McK. at the rate of 10 cents per ton, net or gross as rated, or 5.73 cents per ton, net or gross as rated, on all freight, except as hereinafter noted. No charge was collected on ashes, slag, and other refuse materials. The absorption did not apply on ex-lake ore, or in connection with certain switching movements. On new and repair cars charges were collected at the rate of 10 cents per ton, less the current absorption of 50 cents per car. Reparation as prayed for in the complaint is on 1,352,398.04 tons of freight at the rate of 5.73 cents per ton, or \$77,492.41, and on new and repair cars weighing 285,917 tons, at 10 cents per ton, \$28,591.10, less \$6,489, the current absorption at the rate of 50 cents per car on 12,978 cars, making a total of \$99,595.11, with interest. The record does not show whether the commodities on which reparation is asked were rated on a long-ton or net-ton basis.

The rates of the P., A. & McK. for interchange switching at McKees Rocks on January 1, 1910, were generally \$2.50 per loaded car on freight of all kinds, except ashes and refuse materials, 5 cents per net ton on ashes and other waste materials, and 50 cents per car on new and repair cars between all industries and sidings and junctions with connecting lines. The interchange switching rates of the P., A. & McK. at Allegheny were slightly different and applied only in connection with the Buffalo, Rochester & Pittsburgh. Effective in February and March, 1911, the charges were made the same at Allegheny and McKees Rocks on all traffic originating or destined to points on connecting lines, namely, \$2.50 per car on all freight except granulated slag and clean ashes, on which there was no charge, 50 cents per car on new and repair cars, and \$1 per car on new baggage, mail, and passenger cars. Effective February 15, 1918, the interchange switching rates on all freight, except ashes, slag, and other refuse materials, on which there was no charge, were increased to 10 cents per ton, net or gross as rated, and 10 cents per net ton on new and repair cars. This increase was not authorized by the director general, and it may be noted that General Order No. 28 did not authorize any increase in switching rates when in connection with a line haul. The rate of 10 cents was increased effective August 26, 1920, to 14 cents, and effective January 1, 1921, the rate of 14 cents was made applicable on ashes, slag, and other waste materials. Effective July 1, 1922, the rate of 14 cents was reduced to 13 cents. Effective October 1, 1922, the rate of 13 cents was reduced to 10 cents per ton, net or gross as rated, on all freight, including ashes, slag, and other waste materials, and 10 cents per net ton on new and repair cars, as a result of the agreement with the trunk lines above referred to.

The Wabash-Pittsburgh Terminal Railway was the first road to absorb the charges of the P., A. & McK., the absorption becoming

effective on June 1, 1909. Its action was followed by the Buffalo, Rochester & Pittsburgh. The absorption was generally \$2.50 per car, but different amounts were absorbed on different commodities, as for example, \$1.60 per car on sand and \$2 per car on coal. These absorptions were canceled following the *Industrial Railways Case*, 29 I. C. C. 212. After our supplemental report in that case, 32 I. C. C. 129, the trunk lines, in May, 1916, filed tariffs providing for the absorption of the interchange switching charges of the P., A. & McK. to the extent of 4.27 cents per ton, net or gross as rated, on carload revenue shipments. The absorption also applied on cars containing 10,000 pounds or more of less-than-carload revenue freight, the minimum absorption being computed on basis of 20,000 pounds. The absorption did not apply in connection with traffic moving under switching rates. Effective June 15, 1916, an absorption was made of 50 cents per car on new cars and 25 cents per car on cars repaired or to be repaired. The Buffalo, Rochester & Pittsburgh and the Bessemer & Lake Erie did not join in the absorption on new and repair cars. Effective May 23, 1917, the absorption on ex-lake ore was withdrawn, following *Iron Ore Rate Cases*, 41 I. C. C. 181, in which we found that the line-haul rates on iron ore should not include the service of placing carload shipments at the point of unloading on private industry tracks at destination, and that separate charges should be established for that service. During the period of the complaint the absorption on new and repair cars was 50 cents and 25 cents per car, respectively, which apparently was participated in by all the connecting trunk lines.

From the history of the rates of the P., A. & McK. and the absorptions by the trunk lines it is apparent that the charges in excess of the flat Pittsburgh rates, namely 5.73 cents per ton except on new and repair cars, paid by the complainant were due principally to the increase by the P., A. & McK. of those rates from \$2.50 per car to 10 cents per ton, effective February 15, 1918.

Effective September 6, 1920, the Pennsylvania, the Pittsburgh & Lake Erie, and the Baltimore & Ohio, and effective December 4, 1920, the Buffalo, Rochester & Pittsburgh, which are taken as typical of the trunk lines, published absorptions which varied according to points of origin and destination which were divided into two groups. To and from Groups 1 and 2 the absorptions were 6 cents and 5.5 cents, respectively, on all freight, including cars containing less-than-carload shipments, and on new cars of 70 cents and 66.5 cents, respectively, and on repair cars 35 cents and 33.5 cents, respectively. These absorptions did not apply on ex-lake ore, or on traffic moving under switching rates. Effective July 1, 1922, the absorptions, with

the exception of those of the Buffalo, Rochester & Pittsburgh, were reduced to 5 cents from and to both groups on carload revenue shipments, and 63 cents and 60 cents on new cars, and 32 cents and 30 cents on repair cars from and to Groups 1 and 2, respectively. Effective in October, 1922, the trunk lines, including the Buffalo, Rochester & Pittsburgh, published tariffs absorbing 10 cents per ton, net or gross as rated, on all freight and 10 cents per net ton on new and repair cars. These absorptions were equal to the entire amount of the charges of the P., A. & McK., on the traffic to which they applied. No exception was made of ex-lake ore but the absorption did not apply in connection with certain switching movements, particularly of ashes, slag, and other refuse materials for wasting.

The total weight of the 12,978 new and repair cars on which reparation is asked was 285,917 tons, or an average of 22.8 tons on which the absorption at 10 cents per ton would be \$2.28 per car. The average tare weight of passenger and mail cars, however, is much greater. The average tare weight of a 64-foot steel passenger car is about 132,434 pounds, and of a 70-foot car 144,850 pounds, and the absorption at 10 cents per ton would be \$6.62 and \$7.24 per car, respectively. The average tare weights of mail cars, as shown in *Railway Mail Pay*, 85 I. C. C. 157, were from 89,497 to 117,662 pounds, and absorption on these cars would range from \$4.47 to \$5.88 per car.

Whether the line-haul rates include terminal services to points of loading and unloading in large industrial plants is a question which must be determined upon the facts and circumstances of each particular case. The question is so closely related to the industrial-railway problem that it has seldom been considered apart from the question of whether an industrial railway serving a particular industry was or was not a common carrier. In the instant case no question of the status of the P., A. & McK. as a common carrier arises. The main issue presented is whether the line-haul rates include switching service to points of loading and unloading in complainant's plants. In *General Electric Co. v. N. Y. C. & H. R. R. Co.*, 14 I. C. C. 237; *Solvay Process Co. v. D., L. & W. R. R. Co.*, 14 I. C. C. 246; and *Crane Iron Works v. C. R. R. Co. of N. J.*, 17 I. C. C. 514, we found that at large industrial plants the obligation of the carriers in connection with the line-haul rates extended only to the receipt and delivery of cars at some reasonably convenient points of interchange. These three cases are cited with approval in both the original and the second report in the *Industrial Railways Case*, 29 I. C. C. 212, 32 I. C. C. 129. In *Car Spotting Charges*, 34 I. C. C. 609, we said:

93 I. C. C.

It has long been the custom of carriers in this country to receive and deliver carload freight upon spur tracks leading to private industries at convenient points for loading and unloading without imposing any charge for that service in addition to the line-haul rate, and in the *Los Angeles Case*, 18 I. C. C., 310, we held that where this service is merely a substitute for team-track receipt and delivery of carload freight the line-haul rate covers the service for the reason that rates generally in this country have been constructed upon that basis. Our order in that case was upheld by the Supreme Court. *Los Angeles Case*, 234 U. S., 294. The mere size or complexity of the industry is not controlling in determining whether or not the line-haul rate covers the receipt or delivery at the door of the plant. The service involved in the placement of cars for loading or unloading at an isolated industry to which a single spur leads may be as great as that rendered in the placement of cars for loading or unloading in a large plant having an intricate system of interior tracks. Indeed, there is testimony tending to show that by reason of greater density of traffic and greater tonnage the cost of spotting at the larger industries is less per car than at the smaller industries. * * *

There may be cases in which the spots at which cars are placed for loading and unloading in complex industries are so located that the request for the receipt and delivery of carload freight at such spots could not, in view of general usage, be regarded as reasonable, and where a charge for the spotting service in addition to the line-haul rate might therefore be justified, but the mere fact that an industry is complex, or that it requires an interplant service in addition to the receipt and delivery of carload freight, is not sufficient to justify an additional charge for the placing of cars at the door of the industrial plant for the receipt or delivery of carload freight.

In *Marting Iron & Steel Co. Case*, 48 I. C. C. 620, and in *Virginia Portland Ry. Co.*, 49 I. C. C. 332, we found that the placement of cars on the tracks within the plant inclosures constituted delivery by the trunk lines under the line-haul rates, and that any allowance by the trunk lines for the service of spotting cars after such placement would be improper.

In *United States Cast Iron P. & F. Co. v. Director General*, 57 I. C. C. 677, we said:

Wherever a particular delivery service—spotting at some place of unloading within a plant—properly may be construed as the equivalent of either of these two services, [typical team-track delivery or shunting of a car upon a siding of a shipper clear of the main track] and the rendition of such service practical, we may compel a carrier to perform such service with its own equipment as part of its legal obligation as to delivery of carload traffic. As the magnitude becomes greater than the equivalent of team-track delivery or simple switching delivery, the demand on the carrier for its performance tends to exceed what may be regarded as a proper delivery service under transportation rates.

That case was cited with approval and followed by *Lehigh Portland Cement Co. v. Director General*, 62 I. C. C. 231; *Whitaker-Glessner Co. v. B. & O. R. R. Co.*, 63 I. C. C. 47; and in *Terminal Allow-*

ance to *St. Louis Coke & Iron Co.*, 85 I. C. C. 591. Our finding in the latter case follows:

We find that the designated interchange tracks herein described, which do not include respondent's connection with the plant railway, are reasonably convenient points of interchange; that delivery or receipt thereon of interstate traffic is equivalent to the ordinary public team track or private siding delivery or receipt and constitutes delivery to, or receipt from, the company under the line-haul rates; and that any allowance as compensation for services beyond those interchange tracks would be unlawful. Respondent's connection with the plant railway nearly a mile from the plant's south yard and principal manufacturing structures, can not be deemed a reasonably convenient point of interchange.

Complainant relies upon *Jones & Laughlin Steel Co. v. Director General* and *Carnegie Steel Co. v. Director General*, *supra*, in which we found that the rates on all carload traffic, except iron ore and except local movements in connection with defendant trunk lines at switching rates, moving to or from points of loading or unloading at complainant's plants, were unreasonable and unduly prejudicial to the extent that they exceeded the rates contemporaneously in effect to Woodlawn and Neville Island, Pa., and awarded reparation. Woodlawn and Neville Island are within the Pittsburgh district and take the flat Pittsburgh rates. On iron ore moving to the points in complainants' plants at which it was customarily turned over to complainants for movement to the unloading points, the rates were found unreasonable and unduly prejudicial to the extent that they exceeded the rates contemporaneously in effect to Woodlawn and Neville Island, respectively. The latter case has been reopened and the effective date of the order indefinitely postponed. In neither of these two cases does the point seem to have been raised that the extent or complexity of the plant tracks would justify a charge for placement at points of loading or unloading in addition to the line-haul rates.

The most recent decisions on this subject are *International Harvester Co. v. N. Y. C. R. R. Co.*, 88 I. C. C. 368, and *Jones & Laughlin Steel Co. v. P. & L. E. R. R. Co.* 91 I. C. C. 300, in which we found that during the period of nonabsorption, or of partial absorption, of switching charges by the trunk lines following our first decision in the *Industrial Railways Case*, 29 I. C. C. 212, rates collected on interstate shipments were unreasonable to the extent that they exceeded the junction-point rates and awarded reparation.

Complainant contends that since the P., A. & McK. was held to be a common carrier it follows that the service of spotting cars at points of loading and unloading within complainant's plants at McKees Rocks and Allegheny is a service of transportation and not a plant service. The character of that service, however, was not
93 I. C. C.

changed by the finding that the P., A. & McK. was a common carrier. The holding that a particular industrial railroad is a common carrier means simply that it serves the public as well as the proprietary industry. It does not change the character of the service performed for the proprietary industry.

Complainant contends that admissions on the part of the carriers, by their offer to perform the spotting service, their subsequent absorption of 10 cents per ton, and payment of reparation, and the admission on the part of the director general, by its offer of settlement, establishes the fact that the line-haul rates included the service of spotting at points of loading or unloading, or at the point of final placement of new and repair cars, within complainant's plants. These admissions, although entitled to some consideration, are not conclusive. The director general is not chargeable with any concessions which may have been made by the corporations which succeeded him. His offer was in the nature of an offer of compromise, and in accordance with familiar rules of law is not to be held against him.

The Pittsburgh district, so called, varies according to the origin and destination of the traffic. For distances of 500 miles and over, class and commodity rates are the same to the territory comprising an area of approximately 40 miles around Pittsburgh. For distances of 200 miles and over the Pittsburgh district comprises the territory of approximately 15 miles around Pittsburgh. For shorter distances the rates to and from Allegheny and McKees Rocks are slightly higher or lower than the rates to Pittsburgh proper. The extent to which switching rates of the various carriers serving Pittsburgh are absorbed is not shown by tariff authorities, but complainant relies upon the general statement that delivery on the flat Pittsburgh rate is accomplished by interchange of traffic outside of the city, so that the delivering line receives a line haul. Complainant testified that delivery at points of loading and unloading was made generally to all industries within a radius of 10 miles of the courthouse in Pittsburgh at the flat Pittsburgh rates, but this must be accomplished by routing. There is no general reciprocal absorption of switching charges in the Pittsburgh district such as prevails in other metropolitan districts.

The interchange switching service performed by the P., A. & McK. is briefly described by a witness quoted in *P., A. & McK. R. R. v. Director General*, 57 I. C. C. 1, as follows:

In interchange movement we pick up cars at point of interchange in train lots, bring them into our yard, classify them and in some instances weigh them before classifying them and then take those cars from the classification

yard to the point of spotting. When the car is made empty it is pulled from the unloading point either to a point for reloading or sent out to the trunk-line connection.

Complainant conducted a special investigation as to the character of the terminal services performed at 140 industries within a radius of 10 miles of the courthouse in Pittsburgh. Complainant's witness testified in some detail as to the service performed in placing cars at point of unloading or loading at these different industries. Many of them were served by a large number of lead tracks and spurs, and a majority of the plants having more than three spurs from a switching lead track performed switching service with their own power. Evidence showing the details of the terminal services performed at complainant's plants is lacking. The location of the loading and unloading points is not shown, nor the nature of the service required to reach them. A map of the P., A. & McK. shows a large number of tracks within the plant enclosures.

Complainant shows that the Pennsylvania Railroad absorbed switching charges of the Union Railroad, which serves a considerable number of industries in the Pittsburgh district at the rate of 10 cents per ton, net or gross as rated, from February 15, 1918, to December 24, 1919, on which date the absorption was increased to 12.5 cents per ton, net or gross as rated. The Pennsylvania Railroad absorbed switching charges of the Monongahela Connecting Railroad, another so-called industrial common carrier, in the Pittsburgh district, at the rate of 10 cents per ton, net or gross as rated, from February 15, 1918, to November 1, 1919, on which date the absorption was increased to 12.5 cents. The Union and the Monongahela Connecting Railroads are considerably larger than the P., A. & McK.

Defendant shows that at the time covered by the complaint there were 37 industries on the Baltimore & Ohio, 14 on the Pittsburgh & Lake Erie, and 95 on the Pennsylvania, many of which were located in the Pittsburgh district, which performed their own interchange switching with their own power or with the power of their industrial railroad without compensation. None of these industries, however, was served by an industrial railroad which was a common-carrier railroad, except the Carnegie Steel Company plant located on the Pittsburgh & Ohio Valley Railroad at Neville Island, within the Pittsburgh district, which railroad has since been held to be a common carrier in *Carnegie Steel Co. v. Director General, supra*. Defendant shows that during the period of the complaint switching allowances were made by the trunk lines to 60 industries, many of which were located in the Pittsburgh district, and that these allowances ranged

from 71 cents to \$2.50 per loaded car, and from 1.7 to 12.5 cents per ton, where published in amounts per car or per ton, respectively.

Defendant contends that since the rates to and from the Pittsburgh district were admitted by complainant to have been reasonable during the period of the complaint the issue raised is wholly one of unjust discrimination or undue prejudice, and that since the complainant did not prove any damages resulting from discrimination or prejudice, the complaint should be dismissed. No attempt was made to prove damages resulting from undue prejudice.

The excess over the Pittsburgh rates assailed as unreasonable resulted principally from the increase in the rates of the P., A. & McK., effective February 15, 1918. Ordinarily the burden would be on the P., A. & McK. to justify this increase. The P., A. & McK., however, was represented by the attorney for the complainant and is a complainant in interest. Complainant introduced certain cost studies covering a period of three days in September, 1920, which were also in evidence in *P., A. & McK. R. R. Co. v. Director General*, 69 I. C. C. 223. These cost figures were intended to show that a reasonable absorption out of the line-haul rates by the trunk lines would have been 10 cents per ton. They do not tend to prove in any way that the rates charged the complainant were unreasonable, but were intended to show that the director general should pay the entire amount of the reparation in the event we found the rates assailed were unreasonable.

The record does not show that industries generally within the Pittsburgh district, without regard to their size or the complexity of their plant tracks, received the benefit of the flat Pittsburgh rates on all commodities regardless of their origin or destination. It does appear that a considerable number of large industries performed their own spotting service. Some of these received allowances from the trunk lines and others did not. We find, upon the present record, that the charges paid by the complainant were not unreasonable. Complainant has not shown that it was damaged as the result of any undue prejudice which may have existed. The complaint will be dismissed.

COMMISSIONER McCHORD dissents.

93 I. C. C.

No. 14154

AMERICAN STEEL EXPORT COMPANY v. DIRECTOR
GENERAL, AS AGENT

Submitted May 23, 1924. Decided October 27, 1924

Demurrage and storage charges assessed, but not paid, at the port of San Francisco, Calif., on iron and steel articles, in carloads, shipped on through export bills of lading from certain points in the United States east of the Mississippi River to Java, found inapplicable.

F. W. Knoche and Charles S. Belsterling for complainant.
John F. Finerty and Thomas M. Woodward for defendant.

REPORT OF THE COMMISSION

DIVISION 1, COMMISSIONERS McCHORD, LEWIS, AND McMANAMY

By DIVISION 1:

Exceptions were filed by defendant to the report proposed by the examiner, and the case was orally argued.

By complaint filed August 18, 1922, complainant, a Delaware corporation engaged in the export trade, alleges that the demurrage and storage charge of \$3 per car per day which defendant seeks to exact on 11 carload shipments of iron and steel articles shipped from Alabama City, Ala., Lebanon, Pa., and Warren, Ohio, to Java on through export bills of lading and held in storage at San Francisco, Calif., between February 1 and July 20, 1918, is inapplicable and unreasonable.

The initial bills of lading issued between January 17 and February 7, 1918, consigned the shipments to order of complainant at San Francisco with complainant or its agent at San Francisco as the notify party, and designated the shipments for export, steamer *Arakan*. Space for these shipments had been reserved on that steamer, which was scheduled to sail on February 20. Within the tariff period these bills of lading were exchanged for trans-Pacific export bills of lading with consignment to order of complainant at Batavia, Samarang, and Soerabaya, Java, and notify party as certain concerns in Java. Six carloads arrived at San Francisco during the latter half of February, two on March 7, two on March 8, and one on March 25. The *Arakan* began loading on March 5 and finished on March 15. It refused to accept these and other shipments for

Java. On March 18 the Government commandeered the vessel and unloaded and stored the cargo on Mission Rock in San Francisco Harbor. Complainant's shipments were not included in this cargo and were held by the rail carriers. Complainant endeavored to obtain space on other vessels and in the latter part of July the shipments were taken by the *Rembrandt* and *Bintang*.

The demurrage demanded amounts to \$3,174. It is demanded under a tariff rule which provides unlimited free time—

When consigned through to destination, for which a through Export Bill of lading is issued prior to arrival of freight at Port of Exit: When, not held in transit or at Port of Exit at the request of owner or other party in interest nor because of failure of vessel upon which space has been reserved to make its scheduled sailing * * *.

The director general contends that there was a failure to make the scheduled sailing when the vessel refused to load shipments booked for Java, including those of complainant. It will not be necessary to make a finding on this point in view of our conclusions respecting other provisions of the tariffs.

As in *U. S. Steel Products Co. v. Director General*, 88 I. C. C. 57, the detention charges were subject to a tariff provision substantially as follows:

* * * when not forwarded on the vessel on which space has been reserved due to failure of such vessel to make its scheduled sailing, the free time allowed to unload will be to the first seven A. M. following the scheduled date of sailing of the vessel upon which space was originally reserved, but not less than ten days from the first seven A. M., after arrival at the port of exit, or after date on which the carrier is ready to make delivery at port of exit when advance notice of such date is sent to notify party at port of exit.

There were no parties to be notified at the port. No demurrage or storage therefore could accrue. It appears that certain notices based upon the original domestic bills of lading were sent by the carriers but these original shipping papers had all been surrendered and new export bills of lading had been issued in lieu thereof. The notice in compliance with the terms of the domestic bills of lading was not notice within the terms of the tariffs and was without legal effect to bind complainants for car detention.

Upon this record, and following the case last cited, we find that the demurrage and storage charges sought to be collected were inapplicable. No order is necessary.

No. 14501

UNIVERSAL OIL COMPANY ET AL. v. DIRECTOR GENERAL, AS AGENT, SOUTHERN PACIFIC COMPANY, ET AL.

Submitted May 29, 1924. Decided October 30, 1924

Rate of \$1.75 per 100 pounds charged on three carloads of imported shelled peanuts moved during the period of Federal control from San Francisco, Calif., to Wilmington, N. C., found not unreasonable. Complaint dismissed.

George C. Lucas for complainant.

John F. Finerty and *Thomas M. Woodward* for Director General of Railroads, as agent.

REPORT OF THE COMMISSION

DIVISION 1, COMMISSIONERS POTTER, LEWIS, AND McMANAMY.

By DIVISION 1:

Exceptions were filed by the director general to the report proposed by the examiner, and the case was orally argued. Our conclusions differ from those recommended by him.

The Universal Oil Company, herein called the Universal, formerly manufactured oils and operated an oil-crushing mill at Wilmington, N. C. The other complainant, J. R. C. Boyer, the president and owner of the entire capital stock, except two qualifying shares, of the Universal, deals at New York, N. Y., in raw material and manufactured oils. By complaint filed December 1, 1922, they allege that the applicable domestic rate of \$1.75 charged on three carloads of imported Indian shelled peanuts shipped October 10 and 15, 1918, from San Francisco, Calif., to Wilmington was unreasonable to the extent that it exceeded the subsequently established import rate of \$1.50, effective May 29, 1919. The prayer is for reparation. The present rates are not under attack. Rates are stated in cents per 100 pounds.

J. R. C. Boyer was not a party to the informal complaint filed February 28, 1921. As to him individually the complaint is barred by the statute of limitations.

The director general contends that the complaint is also barred as to the Universal, because, in his view, that company did not bear the freight charges as such, but they were borne by J. R. C. Boyer individually.

The peanuts were imported from the Orient through the port of San Francisco by Mitsui & Company, of San Francisco, and were consigned by that company, order notify the Universal. They were of a very low value when compared with edible nuts produced locally in California. The shipments, aggregating 227,680 pounds, moved over the lines then operated under Federal control, and charges were collected at the rate of \$1.75, applicable on domestic nuts. The peanuts were sold for 5.75 cents per pound, f. o. b. San Francisco, by Wilson-Welch Company to the Boyer Oil Company, Incorporated, New York, and by that company to J. R. C. Boyer, who then sold them to the Universal. The purchase in the first instance was made by the Boyer Oil Company because it was known and could obtain credit. The charge therefor was made on the books of that company to J. R. C. Boyer's personal account, and sale was then made to the Universal so that the transaction would appear on its books. The testimony shows that Boyer's personal account was frequently adjusted by payments to the Boyer Oil Company in excess of his salary or share in the profits, and that the Universal was financed and operated from and by the New York offices of the Boyer Oil Company or J. R. C. Boyer. The latter was and is the president of the Boyer Oil Company and owns the majority of its capital stock. The Boyer Oil Company purchased raw materials for and was the selling agency of the Universal. The evidence clearly shows that the Universal paid and bore the freight charges.

With the consent of its stockholders, the Universal was voluntarily dissolved July 28, 1921, and no longer exists. The certificate of dissolution did not provide for the disposition of the assets of the Universal. However, the record shows that when it was dissolved all of its assets were turned over to J. R. C. Boyer as the actual owner of all of the interest in the concern, and Boyer contends that as the owner of the entire capital stock he is entitled to any award of reparation that might be made for the account of the Universal. The claim was filed before it would have been barred by section 206 of the transportation act, and prior to this time J. R. C. Boyer was shown to be entitled to all the rights, liabilities, and assets of the Universal and was prosecuting this claim in the name of the Universal, as that corporation was the only party named in the transportation records.

During Federal control a complete line of class and commodity rates was established to the southeastern territory by putting it into what is known as Group A transcontinental territory, thus making applicable a rate of \$1.50 on imported peanuts from the Pacific coast to southeastern territory, including Wilmington, effective May 29, 1919, the same as the rate applicable from the north Pacific coast

points. This is a blanket rate covering the United States from Colorado, New Mexico, and Texas to the Atlantic Ocean. Defendants contend that in reaching southeastern territory the shipments moved over the lines of an entirely different set of carriers than those in central or trunk-line territory, carriers which are not nearly so strong financially as the trunk lines from Chicago to New York. There is no merit in this contention, as the carriers were all operated under Federal control at that time.

Defendants offer testimony to show that the former import rate on peanuts, as well as on all other imported commodities, was compelled by water competition existing through Atlantic ports via the Panama Canal; that during the war conditions were such that this competition was practically eliminated; that the import rates were, therefore, canceled; that the subsequently established import rate on peanuts has been compelled by resumption of competition via the Panama Canal and offered comparisons of the import rate on peanuts with domestic rates on other commodities.

In the matter of unreasonableness complainant relies exclusively upon our decisions in numerous cases granting reparation on import shipments of peanuts and other commodities from the Pacific coast ports upon the basis of the subsequently established rate, citing in particular *Mitsui & Co. v. Director General*, 58 I. C. C. 322, and *Albers Bros. Milling Co. v. Director General*, 85 I. C. C. 747. These cases involve imported peanuts shipped from Seattle, Tacoma, and Vancouver, Wash., to Texas points. In each case reparation was awarded to the basis of the subsequently established \$1.50 rate which, like the domestic rate, was the same from all Pacific coast points to eastern defined territories, including Texas and North Carolina. It should be noted, however, that in both cases the rates involved were from Puget Sound points to Texas points, while the shipments involved in the instant case are from San Francisco, Calif., to Wilmington, N. C. It does not necessarily follow, therefore, that because we found a rate of \$1.75 from Puget Sound points to Texas points, for distances of 2,670 and 2,794 miles, respectively, to be unreasonable to the extent it exceeded \$1.50, that a rate from San Francisco to Wilmington of \$1.75, for a haul of 650 and 774 miles greater, is also unreasonable to the extent that it exceeded \$1.50. The ton-mile earnings on the shipments here involved are substantially lower than on the hauls in the two cases cited. In the *Mitsui case*, *supra*, the rate charged returned, on actual loadings, ton-mile earnings of 13.1 mills, and the rate found reasonable, 11.2 mills. In the *Albers case* the rate charged yielded 12.5 mills, and the rate found reasonable, 10.7 mills. In the instant case the rate charged yielded earnings of 10.1 mills, while the rate sought would yield 8.7

mills. The only other fact which would support a finding of unreasonableness is that the rate was subsequently reduced, which, of course, would not of itself support a finding that the rate charged is unreasonable.

We find that the rates assailed were not unreasonable. The complaint will be dismissed.

93 I. C. C.

No. 15331

W. O. ANDERSON COMMISSION COMPANY v. CHICAGO,
 ROCK ISLAND & PACIFIC RAILWAY COMPANY
 ET AL.

Submitted May 31, 1924. Decided October 31, 1924

Rates on cabbage, in bulk, in carloads, from East Grand Forks, Minn., to Topeka, Kans., found not to have been unreasonable and not to be unreasonable or unduly prejudicial. Complainant found not to have been damaged by reason of any undue prejudice that may have existed. Complaint dismissed.

E. H. Hogueland for complainant.

B. W. Scandrett for defendants.

REPORT OF THE COMMISSION

DIVISION 4, COMMISSIONERS MEYER, EASTMAN, AND POTTER

BY DIVISION 4:

This case was presented under the shortened procedure. Exceptions were filed by complainant to the report proposed by the examiner.

Complainant corporation is a wholesale dealer in fruits and vegetables at Topeka, Kans. It alleges that the rates on cabbage, in bulk, in carloads, from East Grand Forks, Minn., to Topeka, Kans., were and are unreasonable, unduly prejudicial to complainant, and unduly preferential of its competitors receiving mixed carloads of potatoes and other vegetables, including cabbage. The prayer is for rates for the future and reparation on a carload moving in October, 1921. Rates will be stated in cents per 100 pounds.

The shipment, weighing 27,525 pounds, moved over the Northern Pacific to Minnesota Transfer, Minn., and the Rock Island beyond, 843 miles. Charges were collected at a rate of 78.5 cents. The applicable combination was 78 cents, composed of the class C rates of 31 cents to Minnesota Transfer and 47 cents beyond. A joint commodity rate of 54.5 cents was contemporaneously in effect over the route traversed on potatoes and on mixed carloads of potatoes and other class C vegetables, including cabbage. It is to the basis of this rate that relief is sought in this proceeding. The mixed-carload provision had been in effect in connection with the Northern Pacific

since 1913, but on April 25, 1922, cabbage was eliminated therefrom. For a number of years cabbage has taken the same rates as potatoes to Topeka from Green Bay and Racine, Wis., and from certain points in California, Louisiana, Texas, Colorado, and Wyoming, and slightly higher rates than potatoes from Minneapolis, Minn.

From points in Oregon, Washington, and Idaho to points in Wyoming, North Dakota, South Dakota, and Minnesota, rates on cabbage and other class C vegetables are uniformly on a much higher basis than rates on potatoes. Between points on the Northern Pacific and Great Northern in Minnesota, Wisconsin, Iowa, North Dakota, and South Dakota, cabbage moves under the class rates, while potatoes move under lower commodity rates. Complainant ascribes this to the fact that there is no particular movement of cabbage from those origins. But it is not shown that East Grand Forks is a greater actual or potential source of cabbage production than other origins in the Northwest, and no instance is cited where rates from that point are as low on cabbage as on potatoes.

The value of cabbage very commonly exceeds that of potatoes, the market prices on the Chicago market since 1921 having ranged from \$7.75 to \$45 per ton on cabbage and from \$16 to \$37 per ton on potatoes. The average loading of cabbage is less than potatoes, and it is more difficult to protect from freezing.

The rates assailed compare favorably, distance considered, with the rates found not unreasonable or prescribed in *Meyer-Vasquez Produce Co. v. Director General*, 89 I. C. C. 437, and *Memphis Freight Bureau v. C. G. W. R. R. Co.*, 81 I. C. C. 626. In the former case, we found that the rate on cabbage, in carloads, moving prior to August 26, 1920, from points in the State of Washington to St. Louis, Mo., 2,377 miles, was unreasonable to the extent that it exceeded 94 cents. In the latter case we found that rates of 63, 63.5, and 57 cents were not unreasonable rates to apply on carload shipments of cabbage moving since August 26, 1920, from St. Ansgar, Iowa, to Memphis, Tenn., 745 miles.

We find that the rates assailed were not unreasonable and are not unreasonable or unduly prejudicial, and that complainant has not been damaged by reason of any undue prejudice that may have existed. The outstanding overcharge should be refunded promptly. The complaint will be dismissed.

COMMISSIONER EASTMAN dissents.

No. 13837

HAYWARD BROTHERS SHOE COMPANY v. CHICAGO,
MILWAUKEE & ST. PAUL RAILWAY COMPANY

Decided October 7, 1924

Upon further consideration, rate charged on rubber arctics, in carloads, from Seattle, Wash., to Omaha, Nebr., found unreasonable. Original report, 83 I. C. C. 525. Reparation awarded.

H. D. Bergen and *C. E. Childe* for complainant.

O. T. Cull for defendant.

REPORT OF THE COMMISSION ON FURTHER CONSIDERATION

BY THE COMMISSION:

In the original report herein, 83 I. C. C. 525, we found that the rate of \$4.335 per 100 pounds charged on three carloads of rubber arctics from Seattle, Wash., to Omaha, Nebr., was not unreasonable and dismissed the complaint. Upon petition of complainant, the case was reopened for further consideration.

In its petition for further consideration, complainant urges that while for the year 1921, during which the shipments in question moved, the average earnings of defendant on all revenue freight amounted to 12.6 mills per ton-mile and 26.78 cents per car-mile on an average haul of 243.1 miles, and the average earnings per car were \$65.70, the average earnings on the shipments in question were 45.8 mills per ton-mile, \$1.18 per car mile, and \$2,200 per car for a distance of 1,892 miles. Complainant compares the earnings under the rate charged with those of 22 mills per ton-mile, 57 cents per car-mile, and \$1,084 per car which would have accrued under the rate of \$2.085 applicable in the opposite direction.

Complainant also stresses the fact that the rates on cash registers, incubators, brooders, drugs, automobile tires, towels, toweling, etc., are the same from Seattle to Omaha as in the reverse direction. In this connection it states that it is the general practice of the trans-continental lines to maintain the same rates in both directions where there is a movement in both directions.

We have frequently given weight to the existing voluntary rates in the opposite direction when no material difference in transporta-

tion conditions exists. *Portland Traffic & Transportation Asso. v. O.-W. R. R. & N. Co.*, 56 I. C. C. 410; *Republic of France v. Director General*, 68 I. C. C. 424, 426; *Memphis-Southwestern Investigation*, 77 I. C. C. 473, 475; *Armour & Co. v. P. R. R. Co.*, 83 I. C. C. 289.

Upon further consideration of all the facts of record, we find that the rate charged on complainant's shipments was unreasonable to the extent that it exceeded \$2.085 per 100 pounds. We further find that complainant made the shipments as described and paid and bore the charges thereon; that it was damaged thereby to the extent that the charges paid exceeded those which would have accrued at the rate herein found reasonable, and that it is entitled to reparation in the sum of \$3,491.45, with interest. An appropriate order will be entered.

HALL, *Chairman*, dissenting:

In the petition for further consideration complainant compares the earnings on these three shipments with earnings on other articles, and shows that more than three carloads of other articles could be transported for less. The only analogous articles brought into comparison with the rubber arctics are boots and shoes from Omaha to Seattle and the earnings on them are based on a carload weight of 30,000 pounds. Boots and shoes load much heavier than that. The average weight of shipments from Omaha to Seattle is not shown, and the comparison is inconclusive.

Complainant also urges that transcontinental carriers usually maintain the same rate in both directions when there is a movement in both directions. The movement of shoes from Omaha to Seattle is considerable. Complainant admits that its shipments have been the only shipments in the reverse direction between those points and there is no likelihood of further movement.

Complainant further insists that the rate applied was unreasonable, especially because the articles were "old," "low grade," and "secondhand." They were surplus Army stock and had never been used. But, apart from that, we have repeatedly said that to require carriers to maintain lower rates on articles secondhand than on like articles new would be impracticable, and would incidentally afford an easy and convenient means for misbilling and unlawful discrimination. *Carnie-Goudie Mfg. Co. v. A., T. & S. F. Ry. Co.*, 68 I. C. C. 40, and cases there cited.

Charges were collected at the applicable second-class rate. Complainant does not attack the rating or the amount of the second-class rate. The movement was unusual; indeed, unique. We have frequently found that where class rates are charged on unusual

movements reparation will not be awarded if the commodity is not improperly classified and the class rate as such is not unreasonable. *Rosin & Turpentine Co. v. A. C. L. R. R. Co.*, 73 I. C. C. 141. That is the case here. But under the majority report, although the rating and rate are left unchanged, this complainant is to get back part of its money.

I find no reason for departing from the finding in the original report. It should be affirmed. I am authorized by COMMISSIONER LEWIS to say that he concurs in this dissenting expression.

COMMISSIONERS MEYER and Cox dissent.

93 I. C. C.

No. 15486

NORWICH PHARMACAL COMPANY *v.* BALTIMORE &
OHIO RAILROAD COMPANY ET AL.

Submitted June 4, 1924. Decided October 17, 1924

Interstate rate on drugs and medicines, in carloads, from Norwich, N. Y., to New York, N. Y., found unduly prejudicial but not unreasonable or unjustly discriminatory. Undue prejudice ordered removed. Complainant not shown to have been damaged by the undue prejudice and reparation denied.

Arthur B. Hayes for complainant.

C. L. Andrus, F. W. Smith, and F. A. Barker for defendants.

Horace W. Bigelow for interveners.

REPORT OF THE COMMISSION

DIVISION 3, COMMISSIONERS HALL, CAMPBELL, AND COX

BY DIVISION 3:

Exceptions were filed by complainant to the report proposed by the examiner.

Complainant, a corporation, manufactures drugs and medicines at Norwich, N. Y. By complaint filed December 14, 1923, it alleges that the rates charged for the transportation of drugs and medicines, in carloads, from Norwich to points in trunk-line territory during the two years next preceding the filing of the complaint have been and are unreasonable, unjustly discriminatory, and unduly prejudicial and preferential of complainant's competitors located at points in central territory. We are asked to prescribe reasonable, nondiscriminatory, and nonprejudicial rates for the future and to award reparation. Petitions of intervention were filed in behalf of Parke Davis & Company, Detroit, Mich.; Eli Lilly & Company, Indianapolis, Ind.; Mallinckrodt Chemical Works, St. Louis, Mo.; Frederick Stearns & Company, Detroit, Mich.; the Upjohn Company, Kalamazoo, Mich.; and the Dow Chemical Company, Midland, Mich. At the hearing the issue was restricted to the rate from Norwich to New York over interstate routes. Rates will be stated in cents per 100 pounds.

Norwich is on the Delaware, Lackawanna & Western, hereinafter referred to as the Lackawanna, and the New York, Ontario & Wes-

tern, hereinafter referred to as the Western, 234 and 225 miles over the respective lines from Hoboken, N. J. The short-line distance of 223 miles from Norwich to New York is over the Western and the Erie and includes 10 constructive miles for the floatage service in New York Harbor. The third-class rate of 47.5 cents, minimum weight 30,000 pounds, is applicable. The reasonableness of the class rate as such is not attacked.

Complainant manufactures what is known in the drug trade as the pharmaceutical line, and, in the sale of its products, is in active competition with manufacturers of drugs and medicines at Detroit, Kalamazoo and Holland, Mich., Cleveland, Ohio, Indianapolis, Ind., and St. Louis, Mo. For many years the rates from those points to New York have been commodity rates lower than the third-class rates. The following table, compiled from exhibits of record, shows the rates and earnings from Norwich, and from the points at which complainant's chief competitors are located, to New York:

To New York, N. Y., from—	Distance	Rate	Ton-mile earnings	Car-mile earnings ¹
	<i>Miles</i>	<i>Cents</i>	<i>Mills</i>	<i>Cents</i>
Norwich, N. Y.-----	223	47.5	42.6	86.4
Cleveland, Ohio-----	586	56.5	19.2	39.1
Detroit, Mich.-----	641	56.5	17.6	35.7
Kalamazoo, Mich.-----	787	70.0	17.7	36.1
Indianapolis, Ind.-----	812	72.0	17.7	36.0
Holland, Mich.-----	837	70.0	16.7	33.9
St. Louis, Mo.-----	1,055	97.0	18.3	37.3

¹ Based on loading of 40,606 pounds per car.

² Short-line distance.

From all of the points shown, except from Norwich, the rates are commodity rates and are applicable over the Lackawanna and the Western. A witness for those lines testified that repeated efforts had been made to persuade the carriers in central territory to restore the rates from the above points to New York to the class basis, but without success. The general basis of rates on drugs and medicines, in carloads, throughout trunk line and central territories is third class, except from the central territory points mentioned, to New York, Philadelphia, and Baltimore, to which destinations commodity rates are published.

Complainant ships an average of one car per week to New York, which is its principal carload market in the East. It also ships in carload quantities to Chicago and Kansas City. During 1923 the average weight per car of complainant's shipments to New York was 42,620 pounds, yielding average revenue of \$222.45 per car, and the average weight of complainant's shipments to New York, Chicago, and Kansas City was 40,606 pounds. Based upon that weight, the average revenue produced by the rate of 47.5 cents to New York was

\$192.88 per car. The average revenue per car yielded by the commodity rates from the competing points in central territory to New York, based on a weight of 40,606 pounds was from Detroit, \$229.42 for 641 miles; Kalamazoo, \$284.24 for 787 miles; Indianapolis, \$292.36 for 812 miles; Holland, \$284.24 for 837 miles; and St. Louis, \$393.88 for 1,055 miles. In 1923 complainant had two damage claims totaling \$14.11 on the shipments to New York.

Comparison of the rate from Norwich with rates from central territory points and of the percentage relationships between the applicable rates and third-class rates is shown in the following table compiled from exhibits of record:

To New York, N. Y., from—	Distance	Rate	Third-class rate	Percentage, rate paid to third-class rate
	<i>Miles</i>	<i>Cents</i>	<i>Cents</i>	<i>Per cent</i>
Norwich.....	¹ 223	47.5	47.5	100.0
Cleveland.....	586	56.5	67.0	84.3
Detroit.....	641	56.5	73.5	76.8
Kalamazoo.....	787	70.0	87.0	80.4
Indianapolis.....	812	72.0	88.0	81.8
Holland.....	837	70.0	87.0	80.4
St. Louis.....	1,055	97.0	110.5	87.7

¹ Short-line distance.

The third-class rate from Norwich is 71.4 per cent of the first-class rate, whereas the commodity rates from central territory points represent an average of approximately 54.5 per cent of the first-class rates from those points to New York.

Complainant testified that the establishment of a commodity rate of 36.5 cents from Norwich would remove the prejudice against that point. The rate of 36.5 cents was arrived at by ascertaining the percentage which the rate from Detroit bore to the third-class rate from that point and by taking that percentage of the third-class rate from Norwich. Another method used in arriving at the rate of 36.5 cents was by figuring the percentage relation that the third-class rate from Norwich to New York bore to the third-class rate from Detroit to New York and applying that percentage to the commodity rate from Detroit to New York. Applying the same methods to the rates from the other points, commodity rates from Norwich would be obtained as follows: Cleveland basis 40 cents, Kalamazoo basis 38 cents, Indianapolis basis 39 cents, Holland basis 38 cents, and St. Louis basis 41.5 cents.

The rate of 36.5 cents is the lowest rate that can be obtained by either of the methods used and is based upon the rate from Detroit, which is a lower percentage of the third-class rate than the rates from any of the other points mentioned. An average of the rates

obtained by the two methods produces a rate of 39 cents, and an average of the high and low rates obtained, using the rates from Detroit and St. Louis as a basis, produces a rate of 39 cents. The rate of 36.5 cents would yield earnings of 32.7 mills per ton-mile and 66.46 cents per car-mile based upon the average weight per car of the shipments to New York. The rate of 39 cents would produce earnings of 35 mills per ton-mile and 74.5 cents per car-mile.

A witness for the official classification committee gave the history of the ratings on drugs and medicines n. o. i. b. n., showing that a rating on those commodities was first established in 1887, and that the third-class rating on carload shipments was first published in 1891. The description covering drugs and medicines includes a large number of commodities and is one of the most extensive and liberal provisions in the classification. An exhibit was offered in evidence to show that the present ratings on drugs and medicines were not excessive.

The witness for the Lackawanna and the Western testified that those lines are not responsible for the publication of commodity rates from points in central territory and can not prevent the continuance of such rates, although they have frequently tried to have the central lines publish the rates on the class basis.

There are no commodity rates on drugs and medicines between any points in trunk-line territory. It was asserted that the effect of a finding of undue prejudice would be a reduction in the rate from Norwich, because the withdrawal of the Lackawanna and the Western from participation in the rates from central points could have no effect on the rates from those points.

No testimony was offered in behalf of the interveners but their counsel stated that there was no objection to the publication of a commodity rate from Norwich to New York.

The allegation of unjust discrimination is not sustained.

We find that the rate on drugs and medicines, in carloads, from Norwich, N. Y., to New York, N. Y., for application over interstate routes was not and is not unreasonable or unjustly discriminatory but that it was, is, and for the future will be unduly prejudicial to complainant and unduly preferential of complainant's competitors at Cleveland, Ohio, Detroit, Kalamazoo, and Holland, Mich., Indianapolis, Ind., and St. Louis, Mo., to the extent that it exceeded, exceeds, or may exceed a rate made less than the following amounts per 100 pounds under contemporaneous rates from the competing points named: Cleveland, 17.5 cents; Detroit, 17.5 cents; Kalamazoo and Holland, 31 cents; Indianapolis, 33 cents; and St. Louis, 58 cents. The undue prejudice should be removed, either by withdrawal of the Lackawanna and Western from the tariffs publishing commodity

rates from the points in central territory to New York, or by the establishment of a commodity rate from Norwich to New York in accordance with the above finding. No damage has been shown to result from the undue prejudice and reparation is therefore denied.

An appropriate order will be entered.

CAMPBELL, *Commissioner*, dissenting:

I agree that the assailed rate is unduly prejudicial, but I would also find it unreasonable to the extent that it exceeded and exceeds 43.5 and 39 cents, respectively, prior and subsequent to July 1, 1922, and award reparation accordingly. Giving due weight to the high value of a carload of drugs and medicines, I think revenue of 3.5 cents per ton-mile and 71 cents per car-mile, which a rate of 39 cents would yield, would be ample.

93 I. C. C.

No. 15066

HAARMANN VINEGAR & PICKLE COMPANY v. CHICAGO
BURLINGTON & QUINCY RAILROAD COMPANY ET AL.

Submitted August 8, 1924. Decided October 25, 1924

Rates on cucumbers in brine, in bulk in barrels, in carloads, and in tank cars, from Blytheville, Ark., to Omaha, Nebr., found to have been and to be unreasonable. Reasonable rates prescribed and reparation awarded.

C. E. Childe and *H. D. Bergen* for complainant.

Robert N. Nash for defendants.

REPORT OF THE COMMISSION

DIVISION 4, COMMISSIONERS MEYER, EASTMAN, AND POTTER

BY DIVISION 4:

This case was presented under the shortened procedure. Exceptions were filed by complainant to the report proposed by the examiner. We have reached conclusions differing somewhat from those proposed by him.

Complainant, a corporation manufacturing pickles and condiments, at Omaha, Nebr., alleges by complaint filed July 16, 1923, that the rates charged by defendants on raw cucumbers, in brine, in bulk in barrels, and in tank cars, shipped between August 16, 1921, and January 24, 1923, from Blytheville, Ark., to Omaha, were unreasonable. The prayer is for reasonable rates for the future and reparation on past shipments. Rates will be stated in cents per 100 pounds.

The shipments consisted of cucumbers in salt brine in barrels, in carloads, and in tank-car loads. They were to be used in the manufacture of pickles, and shipped in brine to prevent deterioration. Blytheville is in northeastern Arkansas on the St. Louis-San Francisco, hereinafter called the Frisco, the St. Louis Southwestern, hereinafter called the Cotton Belt, and the Jonesboro, Lake City & Eastern. With the exception of two carloads the shipments moved over the Frisco to St. Louis and the Chicago, Burlington & Quincy, hereinafter called the Burlington, beyond, 696 miles. One shipment moved over the Cotton Belt to St. Louis and the Burlington beyond, 739 miles, and the remaining shipment over the Jonesboro, Lake

City & Eastern to Nettleton, Ark., and the Missouri Pacific beyond, 774 miles. Charges were collected as follows: On shipments prior to December 22, 1921, at a fifth-class rate of 92 cents governed by the western classification; from that date to January 24, 1923, at commodity rates of 59.5 cents and 53.5 cents prior and subsequent to July 1, 1922, applicable on pickles, in brine, in wood. Effective June 30, 1923, defendants established a commodity rate of 42.5 cents on pickles, cucumbers, in brine, in tank cars, which rate is still in effect. The 53.5-cent rate applicable on pickles, in brine, in wood, was canceled, effective November 27, 1923, on which date a rate of 58.5 cents was established on canned goods, including pickles.

Complainant questions whether the rates assessed were applicable, and argues that the cucumbers were not in fact pickles but were only packed in the salt solution to facilitate transportation to a point where they could be manufactured into pickles. When the shipments moved in 1921 defendants maintained a commodity rate of 69.5 cents on fresh cucumbers, in carloads, minimum 20,000 pounds, from and to the points, and complainant argues that such rate was applicable. Some of the shipments moved several months after the usual gathering season and must have been in the brine solution sufficiently long to remove them from the category of fresh cucumbers. The fifth-class rate on vegetables n. o. i. b. n., in brine, was applicable prior to December 22, 1921.

To support its allegation that the rates charged were unreasonable complainant says that the cucumbers in question were valued at less than \$2 per 100 pounds, that the tank cars were loaded to capacity, and that the average weight of all shipments was 53,577 pounds.

Reference is made to *Haarmann Vinegar & Pickle Co. v. Director General*, 57 I. C. C. 294, wherein we found as reasonable a rate of 29 cents on pickles, in brine, in carloads, minimum 50,000 pounds, from New York Mills, Minn., to Omaha, Nebr., 517 miles, for application during October, 1918, and that rate became 39 cents as a result of the general increases of 1920 and 35 cents under the general reductions of 1922.

In 1921 complainant erected a salting station at Blytheville and contracted with farmers in that vicinity for the production of a large acreage of cucumbers. On March 8, 1921, application was made to the Frisco for a rate of 39 cents on pickles, in brine, to Omaha, which was the rate then applicable from points in Minnesota for average hauls of about 525 miles, and when this request was denied, asked for a rate of 42.5 cents, but this was also refused. The carriers established a rate of 59.5 cents between the points, which was the same as the rate then applicable from Colorado common

points to Missouri River points. Complainant asserts, however, that the 59.5-cent rate from Colorado applied on "finished" pickles, a commodity considerably more valuable than cucumbers in brine, and contends that it was not a fair measure for a rate on its product. At complainant's request the Cotton Belt proposed a rate of 42.5 cents from Blytheville to Omaha, in October, 1922, before the southwestern lines' rate committee, and complainant was advised that such a rate with a minimum of 36,000 pounds, in wood, and 40,000 pounds, in tank cars, would be established. The rate committee of the western trunk lines approved this rate and minima but opposition developed and the rate when established on June 30, 1923, was limited to shipments in tank cars. Complainant contends that the final publication of the rate on pickles, in tank cars, was unreasonably delayed, it having been applied for in 1921 and the general level of rates reduced 10 per cent before it was established. Complainant also contends that if prompt favorable action had been taken on its request the present rate would be 10 per cent lower or 38.5 cents, which it argues would be reasonable, and upon basis of which it asks reparation.

The short-line distance from Blytheville to Omaha is over the Frisco to St. Louis and the Wabash beyond, 654 miles. The car-mile earnings under the rates attacked calculated on 53,580 pounds, the average weight of the shipments, over the short line was 75.3 cents prior to December 22, 1921, 48.7 cents from that date to June 30, 1922, and 43.8 cents thereafter. The earnings over the routes of movement were somewhat lower. These earnings are compared by complainant with earnings of 21.4 cents and 19.2 cents prior and subsequent to July 1, 1922, under rates of 62.5 and 69.5 cents on fresh vegetables of various kinds, minimum of 20,000 pounds, in straight and mixed carloads, from Blytheville to Omaha. Complainant also refers to a rate of 42.5 cents and 38.5 cents prior and subsequent to July 1, 1922, on cucumbers, in brine, from Ola, Ark., to Topeka, Kans., 617 miles, under which the car-mile earnings based on the average weight of complainant's shipments would be 36.9 cents and 33.43 cents, for the respective periods. The earnings under the rates assailed are also compared with the following earnings of the Frisco and Burlington on all freight for the past three years:

	Burlington		Frisco	
	Average haul	Car-mile earnings	Average haul	Car-mile earnings
	Miles	Cents	Miles	Cents
Year 1921.....	292.2	27.35	182.6	35.79
Year 1922.....	300	24.46	177.6	33.45
Year 1923.....	291.8	22.78	187.3	29.59

It is argued that the preponderance of traffic in this territory is southbound and that the movement of cucumbers from Blytheville to Omaha affords some additional traffic in the direction of the predominating empty movement, and that the earnings on the traffic in question should be less than the average on all traffic, and not higher than on carload traffic. The average earnings of these carriers on carload traffic is not shown. Complainant urges that the class rates on the shipments prior to December 22, 1921, were unreasonable for application on a heavy-loading commodity and refers to *Memphis-Southwestern Investigation*, 55 I. C. C. 515, wherein we observed that the rates on the carload classes (fifth class and lower) in that territory were relatively high and moved little carload traffic, the bulk of which moved at commodity rates materially lower than the class basis. The commodity rate on canned goods including pickles prescribed by the commission in the *Memphis-Southwestern Investigation*, 77 I. C. C. 473, for a haul of 654 miles is 60 cents which, based on the car loading of the shipments in question, would produce car-mile earnings of 49 cents.

Defendants contend that the rates charged, particularly the commodity rates since December 21, 1921, were not and are not unreasonable, and show that the present rates are less than the commodity rates on canned goods, including pickles, prescribed by us for hauls of similar length in the *Memphis-Southwestern Investigation*, *supra*. But the distance scales on canned goods and other commodities prescribed in that case were not for application to Omaha from Arkansas points. The rates from Arkansas to points beyond Kansas City and St. Louis are and long have been on a differential basis which to Omaha on canned goods in box cars, is the fifth-class arbitrary over the commodity rate to Kansas City. This basis now applies and is 1.5 cents lower than would apply if the distance scales prescribed in that case were made applicable to Omaha.

The earnings under the rates attacked do not compare unfavorably with the earnings on other instanced commodities rated fifth class in western classification, including canned vegetables and pickles in brine from points in Arkansas to Omaha, Kansas City, St. Louis, and points in Kansas for hauls of comparable length. The present rates on pickles in brine to Omaha from Blytheville are on a basis no higher than the rates from other Arkansas points, and are lower than the distance rates prescribed in the *Memphis-Southwestern Investigation*, *supra*, on many commodities rated fifth class for hauls of similar length. The present rates are relatively lower than the rates from St. Louis to equidistant points in Kansas, which involve hauls a considerable portion of which are in western trunk-line territory. The fact that the value of complainant's product as shipped

is but one-fifth that of finished pickles does not justify the basis sought. Many of the articles included in the canned-goods list are likewise less valuable than finished pickles. The shipments in tank cars moved in equipment especially designed for the handling of complainant's pickles, and the empty movement apparently was equal to the loaded.

We find that the rates assailed were unreasonable to the extent that they exceeded 59.5 cents from August 16, 1921, to June 30, 1922, and 53.5 cents subsequent thereto; that the present rate on cucumbers in brine, in wood, in carloads, is and for the future will be unreasonable to the extent that it exceeds or may exceed 53.5 cents; that complainant made the shipments as described and paid and bore the charges thereon, and was damaged in the amount of the difference between the charges collected and those that would have accrued at the rates herein found reasonable; and that it is entitled to reparation, with interest. Complainant should comply with Rule V of the Rules of Practice.

An appropriate order for the future will be entered.

93 I. C. C.

No. 14124

AMERICAN HOMINY COMPANY v. DIRECTOR GENERAL,
AS AGENT

Submitted September 27, 1923. Decided October 31, 1924

Switching charges collected on intrastate carload shipments at Terre Haute, Ind., during Federal control, found not unlawful or otherwise in violation of the interstate commerce act, except where overcharges resulted from failure to deduct absorption provided for in tariffs of road-haul carriers.

Fittz & Stewart and Frank L. Sullivan for complainant.

John F. Finerty and Royal T. McKenna for defendant.

REPORT OF THE COMMISSION

DIVISION 1, COMMISSIONERS AITCHISON, POTTER, AND McMANAMY
BY DIVISION 1:

Exceptions to the examiner's proposed report were filed by complainant and the case was orally argued.

Complainant, a corporation dealing in grain and grain products at Indianapolis and formerly at Terre Haute, Ind., alleges by complaint filed August 7, 1922, that on approximately 2,825 cars of grain, grain products, and other commodities shipped during the period January 1 to November 26, 1918, the charge of \$5 per car exacted for switching over the Evansville & Indianapolis between the mill it then operated at Terre Haute and connecting lines of the above carrier was unlawful and in violation of section 6, of the act, to the extent that it exceeded \$2 per car. Reparation only is asked. About 2,250 cars were interstate and the remainder intrastate shipments. As to the former, the director general admits the correctness of the claim and expresses willingness to refund the overcharges. This is satisfactory to complainant, and leaves for consideration only the charges on the intrastate shipments.

The director general contends that the matter at issue is identical with that considered in *Terre Haute, Indianapolis & E. T. Co. v. Director General*, 77 I. C. C. 658, decided February 23, 1923, in so far as it dealt with intrastate shipments. Complainant insists that it is broader in scope. The facts there outlined, as introduced in this record, will be reviewed to the extent essential in the disposition of the instant case.

Prior to March 1, 1916, the Evansville & Indianapolis was operated by the Chicago & Eastern Illinois, William J. Jackson, receiver. Effective that date, William P. Kappes was appointed receiver of the former by the United States District Court for the District of Indiana, and he immediately issued and filed notice adopting as of that date tariffs previously filed in its behalf by the receiver of the Chicago & Eastern Illinois. The rate for switching carload freight of the kind here involved between industries on the Evansville & Indianapolis and connecting carriers was then \$2 per car on both interstate and intrastate traffic. In October, 1917, the receiver petitioned the court and alleged that this charge, among others, was so low as to be confiscatory, whereupon the court issued its order of October 23, 1917, to the effect that all unremunerative freight and switching charges prescribed by the Public Service Commission of Indiana, in so far as they related to the Evansville & Indianapolis or its receiver, were unconstitutional and invalid. The order further provided:

IT IS FURTHER ORDERED that the Receiver be and he is hereby authorized and directed to establish and collect rates for all the passenger, freight and switching services of the Evansville and Indianapolis Railroad that shall be sufficient to produce the cost of doing such business and a reasonable and just profit thereon, and from time to time to amend, increase or reduce such rates as the experience of operation shall demonstrate the reasonableness and justice of such amendments, increases or reductions, any statute or decision of said Commission to the contrary notwithstanding, and from time to time to report all such rates to the Court for approval; and, in case any person or persons shall attempt or threaten to enforce such statute or decisions or any penalty on account of the same against the Receiver or any of his officers or employees, that the Receiver may have leave to apply to this Court for an injunction against such person or persons enjoining them from such enforcement or attempt to enforce.

In an effort to comply with this authority, the receiver on the same day issued supplement No. 1 to his adoption notice, effective October 24, 1917, revoking the latter in so far as it adopted Chicago & Eastern switching tariff No. 4360-A, I. R. C. No. 357, I. C. C. No. 2616, which carried the \$2 charge. Simultaneously, he issued Evansville & Indianapolis switching tariff No. 1, I. R. C. No. 100, I. C. C. No. 55, which purported to increase the switching rate to \$4 per car on October 24. These were forwarded to the various commissions. They were rejected by us because of their failure to comply with the interstate commerce act as to notice. The Indiana commission "neither accepted nor rejected them," it taking the position that they failed to comply with the Indiana statutes, which require 10 days' notice to that body of proposed changes in tariffs, but that its jurisdiction had been superseded by the court's order, and the schedules were retained "for information only."

Under date of October 25, 1917, the receiver of the Chicago & Eastern Illinois issued the sixth revised page 23 to its tariff No. 4360-A, I. R. C. No. 357, I. C. C. No. 2616, intended to become effective November 10, 1917, on intrastate traffic and December 5, 1917, on interstate traffic. It contained the following item:

CANCELLATION NOTICE.

All representation for account the Evansville & Indianapolis R. R., in so far as Terre Haute, Ind., is concerned, is hereby cancelled.

For tariff naming switching rates, also absorption of connecting lines' switching charges, refer to E. & I. R. R., I. C. C. No. 55, I. R. C. No. 100, Switching Tariff No. 2, supplements thereto and reissues thereof.

This page was rejected by us, and therefore did not become effective on interstate traffic. But it was formally accepted and filed by the Indiana commission.

The result of the foregoing appears to be that the \$2 charge on intrastate traffic was canceled.

The receiver of the Evansville & Indianapolis issued on November 28, 1917, and delivered to the Indiana commission on November 30 a new schedule designated No. 103, I. R. C. No. 107, naming a rate of \$4 per car for switching intrastate traffic only, effective December 10, 1917, which complied with the provisions of the Indiana statutes regarding notice. On December 28, 1917, he filed with that body supplement No. 1 to the last-named schedule, dated the preceding day, increasing the \$4 charge to \$5, effective January 10, 1918. The Indiana commission apparently considered these in the same light as the original schedules. But they were retained in its files.

At noon of December 28, 1917, the Evansville & Indianapolis passed into Federal control. Regardless of the attitude of the Indiana commission, the receiver, who was continued as agent of the director general until June 1, 1918, required the payment of the increased charges. On the latter date the receiver was succeeded by William J. Jackson, Federal manager, who immediately issued notice adopting the tariffs filed by his predecessor. The tariff and supplement that named the increased intrastate switching charges, E. & I. No. 103, I. R. C. No. 107, I. C. C. No. 91, were filed with us on June 25, 1918, pursuant to General Order No. 28 of the director general. Supplement No. 4, effective November 26, 1918, restored the former \$2 charge.

As stated in *Terre Haute, Indianapolis & E. T. Co. v. Director General*, *supra*—

while the action of the Indiana commission cast some doubt upon the status of the receiver's schedules, those effective December 10, 1917, and January 10, 1918, were filed on statutory notice. They were not rejected by that commission but received and retained in its files, and we are constrained to hold that on the intrastate shipments under consideration the \$4 charge was

applicable prior to January 10, 1918, and the \$5 charge on and after that date, subject to deduction of the amounts that the tariffs of the lines performing the line haul provided that they should absorb.

It is not our province to pass upon the question of whether the United States district court erred.

The road's tariff No. 2-A, I. C. C. No. 94, effective June 25, 1918, referred to by complainant, specifically named charges on interstate traffic only. Supplement No. 7 to Chicago & Eastern Illinois tariff No. 4360-A, I. C. C. No. 2616, is essentially a cancellation notice. It makes no reference to Evansville & Indianapolis tariff No. 103. Inasmuch as the Evansville & Indianapolis intrastate charges at Terre Haute had previously been eliminated from tariff No. 4360-A, this notice had no effect thereon. Hence, the charges assailed have not been shown to have been illegal or otherwise unlawful, except in instances, if any, where a part of the charge should have been absorbed by connecting lines in road-haul rates. The record is inadequate to afford specific findings as to the different shipments. Any such overcharges should be refunded. The intrinsic reasonableness of the switching charges has not been brought in issue.

We find that the assailed charges on the intrastate shipments here under consideration were not unlawful or otherwise in violation of the interstate commerce act, except that failure to deduct the full amount of absorption provided for in the tariffs of road-haul carriers, where such was the case, resulted in charges that were illegal and in excess of the lawfully published charges to the extent that such charges exceeded those herein found applicable.

93 I. C. C.

No. 15344

CALIFORNIA COTTON & FACTORAGE COMPANY *v.* DIRECTOR GENERAL, AS AGENT, CALIFORNIA SOUTHERN RAILWAY COMPANY, ET AL.

Submitted September 17, 1924. Decided October 31, 1924

Shipment of cotton from Blythe, Calif., to Galveston, Tex., during Federal control, found overcharged. Reparation awarded.

F. W. Turcotte for complainant.

R. T. McKenna for defendants.

REPORT OF THE COMMISSION

DIVISION 3, COMMISSIONERS HALL, CAMPBELL, AND COX

BY DIVISION 3:

Exceptions were filed by the Director General of Railroads, as agent, to the report proposed by the examiner.

Complainant, a corporation dealing in cotton at Los Angeles, Calif., alleges by complaint seasonably filed that the rate assessed on 75 bales of cotton shipped November 13, 1919, from Blythe, Calif., to Galveston, Tex., and compressed in transit at Ballinger, Tex., was unreasonable and inapplicable, in violation of sections 1 and 6 of the interstate commerce act and section 10 of the Federal control act. Reparation only is sought. Rates will be stated in amounts per 100 pounds.

The shipment, which weighed 38,176 pounds, moved over the California Southern to Rice, formerly Blythe Junction, Calif., and Atchison, Topeka & Santa Fe lines beyond. Two cars were used both to and from the compress point, on a single bill of lading. Complainant was named as both consignor and consignee, with instructions to the delivering carrier to notify a vendee at Galveston. The rate collected was a combination of commodity rates of 40 cents to Rice and \$1.20 beyond, or \$1.60, no joint rate on cotton being in effect.

The second component was published in Agent Countiss's tariff I. C. C. No. 1065, and was subject to the rule for constructing combination rates provided in Agent Morris's tariff I. C. C. No. U. S. 1, and supplements thereto or reissues thereof. At the time of shipment supplement No. 3 to the latter carried a provision that each

component of combination rates subject to the rule should be reduced by a specified amount, and that to the sum of the remainders thus obtained a specific amount, dependent upon the commodity, should be added. Under that supplement the two foregoing components should have been reduced by 15 cents each and 15 cents representing the increase authorized under General Order No. 28 should have been added to the sum of the remainders, making a through rate of \$1.45. The difference between the charges at this rate and at the rate collected, or 15 cents per 100 pounds, comprises the reparation sought, amounting to \$57.26.

Defendants contend that the California Southern was not under Federal control, was not a party to the above-named transcontinental tariff, did not publish a combination rule, did not refer in its tariffs to any tariff containing such a rule, and, therefore, was not subject to the combination rule in Agent Morris's tariff under the following provisions:

APPLICATION OF TARIFFS

Except as otherwise indicated herein and where specific reference hereto is made in tariffs, rules provided herein apply in connection with rates between points in the United States on roads under Federal control as enumerated in Circular No. 5, I. C. C. No. 1, supplements thereto or reissues thereof, issued by Edward Chambers, Director, Division of Traffic; also in connection with joint rates between points in the United States on such railroads and points in the United States on roads not under Federal control.

Circular No. 5, I. C. C. No. 1, is a list of railroads and systems of transportation under Federal control—

for use in connection with the compilation and publication of tariffs and schedules, the issuing, publication, filing or changing of rates * * * [and which] merely shows the names of the railroads * * * under Federal control for convenient use and reference in all matters pertaining to or connected with tariff publication and rate regulation * * *.

The California Southern is shown in supplement No. 1, issued September 10, 1919, to circular No. 5-A, I. C. C. No. 2.

In *Sligo Iron Store Co. v. W. M. Ry. Co.*, 62 I. C. C. 643, we said:

These cases include situations where the delivering carrier is the only line which publishes the equalizing clause and the tariffs of the other carriers participating in the movement do not publish the clause or refer to any other tariff which publishes such a rule. In those cases we have ruled that, where one of the tariffs used in making combination rates on through shipments contains a rule that such rates will be subject to the increase but once, there is a holding out to the shipper of the rate so constructed, which the carrier should protect.

Except for the medium of publication of the rule the situation here is the same.

Complainant's representative, familiar with the commercial phases of the transaction, was unable to be present at the hearing, and the director general questions the sufficiency of the record to sustain an award of reparation. Any such deficiency is relieved by information contained in papers in the informal claim, which previously had been considered by the director general and were stipulated into this record without objection.

As before stated, complainant was both consignor and consignee. The cotton was sold f. o. b. destination. The purchaser paid the freight at destination, as agent for complainant, and deducted it from the latter's invoice. Complainant contracted with defendants for the carriage of the goods, and was the only party that had privity with them. The only one who can recover is the one that alone was in relation with the carrier and from whom the carrier took the sum. *Southern Pac. Co. v. Darnell-Taenzer Co.*, 245 U. S. 531; *Missouri Portland Cement Co. v. Director General*, 88 I. C. C. 492.

We find that the rate assessed was inapplicable and that the applicable rate was \$1.45. We further find that complainant made the shipment as described; that it paid and bore the charges thereon at the rate herein found inapplicable; that it has been damaged thereby; and that it is entitled to reparation in the amount of \$57.26, with interest.

An order awarding reparation will be entered.

93 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 2177

JUNK, IN MIXED CARLOADS, IN WESTERN TRUNK LINE
TERRITORY

Submitted September 5, 1924. Decided October 31, 1924

Proposed 50,000-pound minimum on junk, in mixed carloads, found not justified.

Suspended schedules ordered canceled without prejudice to the filing of the same rates based upon a minimum of 36,000 pounds.

R. E. Brandt and *R. G. Merrick* for respondents.

A. E. Bazan and *Charles W. Mittendorf* for protestants.

REPORT OF THE COMMISSION

DIVISION 3, COMMISSIONERS HALL, CAMPBELL, AND COX

By DIVISION 3:

By schedules filed to become effective July 15 and August 1, 1924, contained in supplement No. 31 to I. C. C. No. A-1388 and in I. C. C. No. A-1495, respondents in western trunk-line territory proposed to apply to shipments of junk, in mixed carloads, the class C rates subject to a 50,000-pound minimum. Upon protest of the Wichita, Kans., Chamber of Commerce and the Chamber of Commerce of Hutchinson, Kans., the schedules were suspended until November 12, 1924.

The commodities included in the junk list take class rates, either fourth, fifth, C, or D, when in straight carloads, subject to minima which range from 24,000 to 50,000 pounds. Mixed-carload shipments are now charged on the basis of the highest rate and highest minimum weight applicable to any article in the car. Respondents here propose to apply class C rates based upon a minimum of 50,000 pounds to mixed-carload shipments of junk. If such a carload should include any article so listed which is rated fifth class the proposed rates and minimum would result in charges from Wichita to Kansas City, Kans., Chicago, Ill., and other representative points lower by from \$57.50 to \$69.50 per car than those now in effect.

The suspended schedules carry a note to the effect that the aggregate weight of certain of the higher-rated articles, which are included in the mixture, can not exceed 33 $\frac{1}{3}$ per cent of the total weight of the contents of the car. Respondents' witness had no

knowledge of the actual loadings, nor did he know what commodities composed the greater portion of the average mixed carload.

Protestants do not object to application of the class C rates, or of the note just referred to, but they do object to the 50,000-pound minimum. They show that in the entire list only one article, pig-iron drippings, carries this minimum in straight carloads, that four have minima of 24,000 pounds, nine have minima of 30,000 pounds, seven have minima of 36,000 pounds, and two have minima of 40,000 pounds. The record demonstrates that the proposed 50,000-pound minimum can only be loaded in exceptional cases. Small dealers in this territory do not handle pig-iron drippings. Their shipments consist of other articles listed which have lower minima in straight carloads. Protestants think that in some instances even a 30,000-pound minimum would work hardship but they are willing to have it prescribed. They refer to *Loewenthal Co. v. C. & N. W. Ry. Co.*, 68 I. C. C. 115, in which is cited *Radinsky v. C. & N. W. Ry. Co.*, 55 I. C. C. 203. In the latter case we found that rates of 52.5 cents per 100 pounds, minimum 30,000 pounds, or mixed carloads of rags and scrap rubber, and 60 cents per 100 pounds, minimum 36,000 pounds, on mixed carloads of junk and scrap metals, including copper, brass, and aluminum, would be reasonable maximum rates from points in Colorado common-point territory to Chicago between November, 1915, and June, 1917. All of these commodities are carried in the junk description here under suspension.

We find that the suspended schedules have not been justified. An order will be entered requiring their cancellation and discontinuing this proceeding. This finding is without prejudice to the filing of new schedules naming the proposed rates based upon a minimum of 36,000 pounds.

No. 14937

AMERICAN HIDE & LEATHER COMPANY, v. DIRECTOR
GENERAL, AS AGENT

Submitted April 26, 1924. Decided October 31, 1924

Rate on tanbark, in carloads, from Ross Spur (Wild Cat Spur), Wis., to Sheboygan, Wis., during Federal control, found not unreasonable. Complaint dismissed.

A. E. Solie for complainant.

John F. Finerty and *John C. Brooke* for defendant.

REPORT OF THE COMMISSION

DIVISION 3, COMMISSIONERS HALL, CAMPBELL, AND COX

BY DIVISION 3:

Exceptions were filed by complainant to the report proposed by the examiner.

Complainant, a corporation, operates a tannery at Sheboygan, Wis. By complaint filed May 31, 1923, it alleges that the rate charged on 68 carloads of tanbark shipped intrastate from Ross Spur (Wild Cat Spur), Wis., to Sheboygan, during the period from December 31, 1918, to February 22, 1919, was unjust and unreasonable. We are asked to award reparation. The complaint was filed on the informal docket January 10, 1921. Rates will be stated in cents per 100 pounds.

Ross Spur is a nonagency station on the McCullough branch of the Chicago, Milwaukee & St. Paul, hereinafter called the Milwaukee, which branch extends from Boulder Junction, Wis., northward to Blue Bill, Mich., a distance of 13.5 miles. Sheboygan, on Lake Michigan, is served by the Chicago & North Western, hereinafter called the North Western. The shipments averaged 28,325 pounds and were delivered to the Milwaukee unrouted. All but one moved over that line to Plymouth, Wis., and the North Western beyond, 375 miles. The remaining shipment moved over the Milwaukee to Wausau, Wis., and the North Western beyond, 251 miles. Charges were collected at a combination rate of 16 cents, composed of a rate of 3.5 cents from Ross Spur to Boulder Junction and a rate of 12.5 cents maintained from the Milwaukee's Star Lake group to

93 I. C. C.

Sheboygan and points grouped therewith. Complainant contends that the rate charged was unreasonable to the extent that it exceeded the 12.5-cent rate applicable from the Star Lake group, which included points on the Milwaukee north of Tomahawk, Wis., except those located on the McCullough branch. The bulk of the traffic from these points consists of logs, pulp wood, and forest products other than lumber as there are no sawmills on the Milwaukee north of Tomahawk.

Tanbark takes lumber rates in Wisconsin, which are generally grouped as to points of origin and destination. It is the carriers' policy to apply the group rates from branch lines serving points at which lumber or other forest products taking lumber rates originate and the same rates generally apply for single-line and two-line hauls. Complainant points out that Ross Spur and other stations on the McCullough branch were included in the Star Lake group with respect to rates to western trunk-line, central, and trunk-line territories and insists that no conditions existed which justified a rate higher than the group rate from Ross Spur to Sheboygan. It asserts that operating conditions on the McCullough branch are similar to those formerly encountered on the Papoose branch, from which the group rate was published to Sheboygan. The latter branch extended in a northwesterly direction from Boulder Junction to Papoose, Wis., 11.5 miles. Defendant ceased operating this branch in 1918.

Complainant insists that as the participating carriers were under a common control the logical route of movement was via Wausau and the North Western and has used this route in computing distances shown in its exhibits. A rate of 14 cents subsequently established was made applicable over this route. Complainant shows that the average distance of 235 miles to Sheboygan from points accorded the Star Lake group rate, including those on the Papoose branch, would have been increased only 4 miles if Ross Spur and other points on the McCullough branch had been included in the group. The distances from points in the Star Lake group to all points on the North Western to which the 12.5-cent rate applied ranged from 146 to 273 miles and averaged 219 miles. The North Western and the Minneapolis, St. Paul & Sault Ste. Marie applied the 12.5-cent rate to Sheboygan from their so-called Rhinelander group which embraced, among others, points north and west of Ross Spur, the longest and average distances being 269.7 and 222 miles, respectively. A rate of 12.5 cents from the Star Lake group, including points on the McCullough branch, to Plymouth, 5 miles west of Sheboygan, applied in connection with the Green Bay & Western via Wisconsin Rapids and Green Bay, Wis., for distances ranging from 243 to 301 miles and averaging 279 miles.

Complainant cites *Bekkedal v. C., St. P., M. & O. Ry. Co.*, 37 I. C. C. 611, in which we found that a rate charged on lumber from Couderay to Boscobel and other points in Wisconsin for joint-line hauls averaging 315 miles was unreasonable to the extent that it exceeded 12.5 cents. This rate was increased to 15.5 cents under the general increases of 1918. In *Wheeler & Timlin v. Director General*, 60 I. C. C. 265, a rate charged in November, 1919, for a two-line haul of lumber from Long Lake to Dorchester, Wis., 214 miles, was found unreasonable to the extent that it exceeded 12.5 cents.

Defendant, in support of his contention that the rate assailed was not unreasonable, urges that no tanbark moved from Ross Spur to Sheboygan before or after these shipments; that request for a through rate was not made until after the movement had ceased; that the shipments moved during a period when operating conditions on the McCullough branch are rendered difficult by heavy snowfall; that no regular service is maintained on this branch; and that cars required for the movement of the traffic are hauled north empty from Wausau or Merrill, Wis. He also urges that in this territory rates on lumber and other forest products are depressed by competitive influences and that distance and cost of service were not controlling factors.

Defendant compares the car-mile earnings under the initial factor of the rate assailed with the earnings under a rate of 5 cents applicable on lumber from Mystic Wharf and East Cambridge to Cambridge, Mass., 5 miles. He also insists that as the 12.5-cent rate applied from points less distant from Sheboygan than Boulder Junction it was a reasonable rate from the latter point. The issue here is the reasonableness of the through rate and not that of its components.

Based on distances of 375 and 251 miles over the routes traversed the rate assailed yielded ton-mile earnings of 8.5 and 12.7 mills, and car-mile earnings of 12.04 and 18 cents, respectively, using the average weight of the shipments. Defendant refers to rates ranging from 18 to 22.5 cents contemporaneously applicable on like traffic from points in Kentucky, Tennessee, and West Virginia to Columbus, Ind., and Buckhannon, W. Va., at which tanneries are located, yielding ton-mile earnings of from 14.1 to 22.2 mills for distances varying from 162 to 305 miles. He also refers to *Bretney Co. v. Director General*, 58 I. C. C. 217, in which we found not unreasonable a combination rate of 19.5 cents charged on tanbark shipped in June and July, 1919, from Webbville and Willard, Ky., to Springfield, Ohio, approximately 165 miles. In *Michigan Tan-*
93 I. C. C.

ning & Extract Co. v. C., M. & St. P. Ry. Co., 87 I. C. C. 322, a rate of 32.5 cents was found not unreasonable for the movement of like traffic from B. & B. Spur to Fremont, Mich., 483 miles, between September 17 and November 24, 1920.

We find that the rate assailed was not unreasonable. The complaint will be dismissed.

No. 13418

HOUSTON COTTON EXCHANGE & BOARD OF TRADE
ET AL. *v.* ARCADE & ATTICA RAILROAD CORPORATION
ET AL.

Submitted July 16, 1924. Decided November 4, 1924

The commission has power to establish through routes and to prescribe maximum rail-and-water and rail-water-and-rail rates on cotton from Oklahoma points to points in New England territory. Findings in original report, 87 I. C. C. 392, affirmed.

R. C. Fulbright, F. R. Dalzell, E. H. Thornton, and J. L. West for complainants.

A. B. Enoch, G. B. Ross, J. S. Hershey, T. L. Bothwell, J. E. Bailey, C. W. Owen, and J. M. Strupper for southwestern rail lines.

William Simmons for Southern Pacific Company, Atlantic Steamship Lines; and *W. P. Levis* for Clyde Steamship Company and Mallory Steamship Company.

REPORT OF THE COMMISSION ON FURTHER ARGUMENT

BY THE COMMISSION:

In our original report, 87 I. C. C., 392, we found that it was desirable and in the public interest that the defendants should establish joint rail-and-water and rail-water-and-rail rates on cotton from Oklahoma points to points in New England territory and that the rates would be unreasonable to the extent that they exceeded rates constructed by the deduction of 4 cents from the all-rail rates. The principal rail-and-water routes to seaboard territory are rail to Galveston, Tex., thence to New York, N. Y., via the Mallory Steamship Line or the Southern Pacific Company, Atlantic Steamship Lines, hereinafter called the Mallory Line and the Morgan Line, respectively. The all-rail routes are through St. Louis, Mo., Memphis, Tenn., and other Mississippi River crossings. We further

found that the rail-and-water and rail-water-and-rail rates on cotton from Oklahoma points to other points in the northeastern portion of the United States were not unreasonable. Also that we were without authority to require the establishment of joint through rates to points in Canada. Defendants were expected to comply with our findings within 90 days from the service of our report, failing which the matter might be again brought to our attention. Upon defendants' petition the proceeding was reopened and further oral argument had. This argument was devoted largely to the discussion of the question of our jurisdiction in the premises.

The Mallory Line is not under the control or management of any rail carrier. The Morgan Line is under the control of the Southern Pacific Company.

Section 1 of the interstate commerce act reads in part as follows:

(1) That the provisions of this Act shall apply to common carriers engaged in—

(a) The transportation of passengers or property wholly by railroad, or partly by railroad and partly by water when both are used under a common control, management, or arrangement for a continuous carriage or shipment; * * *

(2) The provisions of this Act shall also apply to such transportation * * *, but only in so far as such transportation * * * takes place within the United States.

Section 15 of the act reads in part as follows:

(3) The Commission may, and it shall whenever deemed by it to be necessary or desirable in the public interest, after full hearing upon complaint or upon its own initiative without a complaint, establish through routes, joint classifications, and joint rates, fares, or charges, applicable to the transportation of passengers or property, or the maxima or minima, or maxima and minima, to be charged, (or, in the case of a through route where one of the carriers is a water line, the maximum rates, fares, and charges applicable thereto), and the divisions of such rates, fares, or charges as herein-after provided, and the terms and conditions under which such through routes shall be operated; and this provision, except as herein otherwise provided, shall apply when one of the carriers is a water line. * * *

Section 6 reads in part as follows:

(13) When property may be or is transported from point to point in the United States by rail-and-water through the Panama Canal or otherwise, the transportation being by a common carrier or carriers, and not entirely within the limits of a single State, the Interstate Commerce Commission shall have jurisdiction of such transportation and of the carriers, both by rail and by water, which may or do engage in the same, in the following particulars, in addition to the jurisdiction given by the Act to regulate commerce, as amended June eighteenth, nineteen hundred and ten:

(a) To establish physical connection between the lines of the rail carrier and the dock * * *.

(b) To establish through routes and maximum joint rates between and over such rail and water lines, and to determine all the terms and conditions under which such lines shall be operated in the handling of the traffic embraced.

Defendants contend that the portions of sections 15 and 6 quoted above are qualified by section 1 so that they relate to transportation partly by rail and partly by water only when both are used under a common control, management, or arrangement for a continuous carriage or shipment. But this would lead to the absurd conclusion that we are enabled to establish a physical connection at a dock between a rail carrier and a water carrier only where the water carrier already has an arrangement for continuous service with the rail line.

We construe paragraph (13-b) of section 6 to confer upon the commission power to establish through routes and maximum joint rates between and over the rail and water lines and with respect to the transportation referred to in the opening paragraph of paragraph (13) of section 6.

No considerations concerning the merits of the case were advanced upon reargument which are not fully covered by the original report.

Our original findings are affirmed. Defendants will be expected to comply with these findings within 90 days from the service of this report, failing which the matter may be again brought to our attention.

CHAIRMAN HALL dissents.

93 I. C. C.

No. 14876¹TOLEDO COOKER COMPANY v. NELSON & ALBEMARLE
RAILWAY COMPANY ET AL.

Submitted May 31, 1924. Decided October 31, 1924

Rates applicable on soapstone disks, loose, in carloads, from Schuyler and Tye River, Va., to Toledo, Ohio, and Muncie, Ind., found unreasonable. Maximum reasonable rates prescribed for the future and reparation awarded.

L. G. Macomber and John J. O'Neill for complainants.

A. H. Lloyd for Nelson & Albemarle Railway Company, and
J. S. Patterson for Chesapeake & Ohio Railroad Company.

REPORT OF THE COMMISSION

DIVISION 3, COMMISSIONERS HALL, CAMPBELL, AND COX

BY DIVISION 3:

Exceptions were filed by complainants to the report proposed by the examiner.

Complainants are corporations manufacturing fireless cookers at Toledo, Ohio, and Muncie, Ind. By complaints filed April 28 and August 30, 1923, respectively, they allege that the rates on soapstone disks, loose, in carloads, to Toledo from Schuyler and Tye River, Va., and to Muncie from Schuyler, were and are unreasonable, unjustly discriminatory, unduly prejudicial, and in violation of the long-and-short-haul clause of the fourth section. We are asked to prescribe reasonable rates for the future and to award reparation. Rates will be stated in cents per 100 pounds.

The commodity consists of a soapstone disk, weighing 7.5 pounds. Each disk is $8\frac{5}{8}$ inches in diameter, $1\frac{1}{8}$ inches thick, planed on one face, and planed and sand-rubbed on the other and on the edge; with a circular counterbored depression 1.5 inches in diameter in the center of the smooth face, a groove about 3 inches long and 0.25 inch wide in the center of the rough face, a small hole through the center of the disk, and two semicircular flatbottomed depressions 1.5 inches in diameter on the smooth face opposite each other adjacent to the edge. The disk is made in accordance with specifications for use as a radiator or hot plate in fireless cookers, the cooker manu-

¹ This report also embraces No. 14876 (Sub-No. 1), Durham Manufacturing Company v. Nelson & Albemarle Railway Company et al.

facturer merely putting a cotter pin through the hole in the center and placing one disk on a rack above and one disk below the receptacle into which the food is to be placed. The shipments move to complainants in carloads, the disks being placed on edge in rows two layers deep with strips of lumber holding them in place. The shipments to Toledo average about two carloads per month. The average loading is about 48,000 pounds.

Schuyler is on the Nelson & Albemarle, 8 miles west of Esmont, Va., and Tye River is on the Southern, 23 miles north of Lynchburg, Va., the short-line distances over the Chesapeake & Ohio and connecting lines being 601 and 644 miles, respectively, to Toledo and Muncie from Esmont and 570 miles to Toledo from Lynchburg. During the statutory period the shipments were billed as soapstone slabs and charges were collected at the commodity rates applicable from Schuyler to Esmont, and the applicable arbitrary, Tye River over Lynchburg and other Virginia common points, plus the fifth-class rates beyond, the latter being applicable to "soapstone: slabs, dressed, or forms, N. O. I. B. N., in barrels, boxes or crates, carload minimum 30,000 pounds." The rating applicable to and beyond the junction points under rule 5 of the governing classification was third class. Complainants contend that by virtue of the so-called analogy rule the applicable rating was sixth class, being that applicable to "soapstone: lump or rough slabs, loose, carload minimum 36,000 pounds" and to "soapstone: linings, fire box or furnace, loose, carload minimum 40,000 pounds." But that rule has no application where, as here, the commodity is clearly and definitely covered by another provision of the classification. *Friedlander v. Director General*, 85 I. C. C. 465.

Soapstone foot warmers, griddles, laundry tubs, and sinks, in barrels, boxes, or crates, carload minimum 30,000 pounds, take commodity rates from Esmont to Chicago, Ill., and St. Louis, Mo., 822 and 877 miles, of 38 and 47.5 cents, respectively, equivalent to about 73 per cent of the corresponding fifth-class rates. Prior to March 25, 1923, commodity rates 3 cents higher were in effect from Tye River to the same destinations. Since July 31, 1922, a commodity rate of 7.5 cents has been in effect from Schuyler to Esmont on soapstone furnace linings. It is to the bases of these rates that relief is sought in this proceeding. The quarries at Tye River have been abandoned and rates for the future are asked from Schuyler only. The rates charged and sought are detailed below:

	Rate charged			Rate sought		
	To junction point	Beyond junction point	Total	To junction point	Beyond junction point	Total
To Toledo from Schuyler:	<i>Cents</i>	<i>Cents</i>	<i>Cents</i>	<i>Cents</i>	<i>Cents</i>	<i>Cents</i>
April 28, 1921, to June 19, 1921.....	12.5	44	56.5	8.5	33	41.5
June 20, 1921, to June 30, 1922.....	12.5	46	58.5	8.5	33	41.5
July 1, 1922, to Aug. 30, 1922.....	12.5	41	53.5	8.5	30	38.5
Since Aug. 31, 1922.....	11.5	41	52.5	7.5	30	37.5
To Toledo from Tye River:						
April 28 to June 19, 1921.....	3	44	47	3	33	36
June 20, 1921, to June 30, 1922.....	3	46	49	3	33	36
July 1, 1922, to March 25, 1923.....	2.5	41	43.5	2.5	30	32.5
To Muncie from Schuyler:						
August 30, 1921, to July 30, 1922.....	12.5	49.5	62	8.5	38	46.5
July 1, 1922, to Aug. 30, 1922.....	12.5	44.5	57	8.5	34	42.5
Since Aug. 31, 1922.....	11.5	44.5	56	7.5	34	41.5

The rates charged from Schuyler to Esmont are somewhat higher than the corresponding fifth-class rates and represent rates established in 1907 on all soapstone, except rough blocks, after informal conferences with representatives of the State Corporation Commission of Virginia, this commission, and the Nelson & Albemarle. For convenience that carrier also adopted the Chesapeake & Ohio class scale for local and proportional application on its line, the through rates being made up of the combinations over the junction point. No substantial tonnage moves under its class rates. The principal soapstone quarries in the United States are located at Schuyler. The soapstone company owns the capital stock of the Nelson & Albemarle, and its output comprises the bulk of that carrier's traffic. For the six years ended December 31, 1922, the carrier earned a total profit of \$4,622.

The commodity rates on plumbing supplies and other soapstone products to St. Louis and Chicago represent rates established about 1905 in order to enable the Schuyler interests to compete with those who made similar products of vitriolite, enameled iron, ceramic ware, porcelain, slate, and wood. Complainants' only competitors are located at Chicago and at Bluffton, Ohio. The rates to St. Louis, Chicago, and Bluffton on the commodity under consideration are on the same basis as to Muncie and Toledo. The allegations of undue prejudice, unjust discrimination, and fourth-section violation are not sustained.

The class rates from trunk-line territory to Toledo and Muncie are based on 78 and 85 per cent of the New York-Chicago rates. Complainants state that there are commodity rates to Toledo and Chicago which bear this same relationship. For example, the rate on phosphate rock from Esmont to Toledo is 29.5 cents, which is about 78 per cent of the 38.5-cent rate on the same commodity from Esmont to Chicago. We have repeatedly found that we can not accept the percentage formula as a measure of the reasonableness of

rates or as a criterion of their lawfulness in other respects, the matters to be considered being rather the earnings and transportation conditions. *General Chemical Co. v. B. & O. R. R. Co.*, 83 I. C. C. 582.

Defendants are apparently willing to waive undercharges on past shipments to the basis charged, but express their intention to require the commodity to be crated before applying the fifth-class rates in the future. They do not contend that crating is required by the nature of the traffic as is the case with plumbing supplies and other finished soapstone products moving under fifth-class rates. The shipments to complainants made in the manner described above have been perfectly satisfactory and the claims for loss and damage negligible. Under the circumstances defendants other than the Nelson & Albemarle should have provided commodity rates somewhat lower than fifth class on soapstone disks, loose, to Toledo and Muncie. But such rates should have been and may properly be somewhat higher than the sixth-class rates on rough soapstone slabs and fire-box linings.

We find that the rates applicable on soapstone disks not exceeding 9 inches in diameter and 1.5 inches in thickness, loose, in carloads, minimum 40,000 pounds, from Schuyler, Va., to Toledo, Ohio, and Muncie, Ind., were, are, and for the future will be, unreasonable to the extent that the components thereof beyond Esmont, Va., exceeded, exceed, and may exceed 42 and 45 cents, respectively, prior to July 1, 1922, and 38 and 40.5 cents thereafter, and that the rates on the above-described traffic from Tye River, Va., to Toledo were unreasonable to the extent that they exceeded 45 cents prior to July 1, 1922, and 40.5 cents thereafter. We further find that complainant Toledo Cooker Company received the shipments as described and paid and bore the charges thereon; that it was damaged thereby in the amount of the difference between the charges paid and those which would have accrued at the rates herein found reasonable; and that it is entitled to reparation, with interest. This complainant should comply with Rule V of the Rules of Practice. No evidence of damage was offered on behalf of complainant Durham Manufacturing Company.

An order for the future will be entered.

CAMPBELL, *Commissioner*, dissenting in part:

I agree with the conclusions as far as they go, but I think we should also find the components from Schuyler to Esmont unreasonable to the extent that they exceeded the corresponding fifth-class rates. The rates charged from and to those points were higher than fifth class. If commodity rates lower than fifth class were or are proper beyond Esmont, and we so find, then I see no justification for any rate higher than fifth class up to Esmont.

No. 14478

C. B. COTTON ET AL. v. MINNEAPOLIS & RAINY RIVER
RAILWAY COMPANY ET AL.

Submitted January 31, 1924. Decided October 31, 1924

Rate on lumber, in carloads, from Big Fork, Minn., to Horicon, Wis., found not unreasonable. Complaint dismissed.

B. T. Bailey for complainant.

T. M. Hanrahan for defendants.

REPORT OF THE COMMISSION

DIVISION 3, COMMISSIONERS HALL, CAMPBELL, AND COX

BY DIVISION 3:

Exceptions were filed to the report proposed by the examiner. Our conclusions differ from those recommended by him.

Complainants are C. B. Cotton and J. S. Cotton, copartners doing a retail lumber business at Horicon, Wis., under the firm name of C. B. Cotton & Son. By complaint filed November 20, 1922, they allege that the rate of 37.5 cents charged for the transportation of five carloads of lumber and lath shipped between August 9 and September 16, 1922, from Big Fork, Minn., to Horicon, was unjust, unreasonable, and in violation of the long-and-short-haul provision of section 4 of the interstate commerce act. We are asked to award reparation. Rates are stated in cents per 100 pounds.

Big Fork is in northern Minnesota, about 50 miles from the Canadian boundary, on the Minneapolis & Rainy River. Horicon is about 50 miles west of Milwaukee, Wis., on the Chicago, Milwaukee & St. Paul. The shipments, averaging 47,240 pounds, moved over the Minneapolis & Rainy River to Deer River, Minn., the Great Northern to Minnesota Transfer, Minn., and the Chicago, Milwaukee & St. Paul beyond. The rate charged was a combination of a rate of 8 cents to Deer River and a joint rate of 29.5 cents beyond. There were and are no joint rates from points on the Minneapolis & Rainy River to points in Wisconsin and Illinois. Joint rates over the Great Northern applied and now apply from Deer River to points in those States, the rate contemporaneously in effect from Deer River to North Milwaukee, Milwaukee, and Racine, Wis., Chicago, Ill., and other Lake Michigan ports being 23 cents. Horicon is intermediate

between North Milwaukee and Deer River. This departure from the requirements of the fourth section was covered by an application, which was denied effective February 1, 1923. On that date the rates to Horicon and other points were reduced to the level of the rate to Chicago, namely, 23 cents.

Defendants' witness testified that the fourth-section departure was occasioned by water competition from Duluth, Minn., and other points at the head of the lakes to Lake Michigan ports. There is still a movement of lumber by lake boats from Duluth, but the volume of that movement has greatly decreased in recent years. Rates from Deer River were then made an arbitrary over the Duluth rates to points in Wisconsin and Illinois and reflected the same fourth-section departures as existed in the rates from Duluth. In *Lumber between Points in Western Trunk Line Territory*, 38 I. C. C. 370, the carriers proposed to increase the rate from Duluth to Chicago from 10 cents to 12 cents and to reduce the rate to Horicon and other intermediate points from 14 cents to 12 cents, thereby eliminating the fourth-section departures. We found the proposed rates justified, although we had previously authorized the continuance of lower rates from Duluth and Lake Superior ports to Lake Michigan ports than to intermediate points. At the time the rate from Duluth to Horicon was reduced from 14 cents to 12 cents no change was made in the rate from Deer River. The only changes in the rates from Deer River to Horicon since 1915 have been the general increases and decrease authorized by us.

The following table taken from complainant's exhibit shows the ton-mile earnings under the rate charged and under the present rate, together with the earnings under various rates referred to by way of comparison:

From—	To—	Distance	Rate	Ton-mile earnings
		<i>Miles</i>	<i>Cents</i>	<i>Mills</i>
Big Fork, Minn.....	Horicon, Wis.....	566	37.5	13.2
Do.....	do.....	566	131	10.9
Williams, Minn.....	do.....	685	26	7.5
International Falls, Minn.....	do.....	612	24.5	7.9
Duluth, Minn.....	Chicago, Ill.....	480	18.5	7.7
Rainy River, Ontario.....	Horicon, Wis.....	677	26	7.6
Coleraine, Minn.....	do.....	538	28	10.4
Virginia, Minn.....	do.....	524	25	9.4
Bemidji, Minn.....	Streator, Ill.....	681	30.5	8.9

¹ Rate proposed by complainant.

No movement under these rates was shown, but all of the points of origin are located in the same lumber-producing region.

The Minneapolis & Rainy River is a short line dependent for its existence upon lumber traffic. Williams, Minn., and Rainy River,

Ontario, are on the Canadian Northern; International Falls and Virginia, Minn., on the Duluth, Winnipeg & Pacific, a subsidiary of the Canadian National Railways; and Coleraine, Minn., on the Duluth, Missabe & Northern.

Defendants contend that a fairer test of the rate assailed is had by comparison with rates from Big Fork to points in Wisconsin, Iowa, South Dakota, and Nebraska not affected by water competition, as follows:

From Big Fork, Minn., to—	Distance	Rate	From Big Fork, Minn., to—	Distance	Rate
	<i>Miles</i>	<i>Cents</i>		<i>Miles</i>	<i>Cents</i>
Horicon, Wis.....	566	37.5	Cedar Rapids, Iowa.....	550	37.5
Madison, Wis.....	559	37.5	Marshalltown, Iowa.....	546	37.5
Watertown, Wis.....	558	37.5	Sioux City, Iowa.....	534	41
Stoughton, Wis.....	574	37.5	Yankton, S. Dak.....	518	43
Perry, Iowa.....	549	39	Sioux Falls, S. Dak.....	455	41
Des Moines, Iowa.....	549	39	Dubuque, Iowa.....	534	37.5
Oskaloosa, Iowa.....	576	37.5	Omaha, Nebr.....	634	44.5
Montezuma, Iowa.....	561	37.5			

Similar rates from Crookston, Minn., are shown by defendants' exhibits. Defendants state that the sole purpose of the subsequent reduction was the removal of fourth-section departures.

We find that the rate assailed was not unreasonable. The complaint will be dismissed.

CAMPBELL, *Commissioner*, dissenting:

Comparisons with other rates of record not affected by water competition convince me that the assailed rate should be found unreasonable to the extent that it exceeded the rate of 31 cents contemporaneously in effect to the more distant point of North Milwaukee.

93 I. C. C.

No. 15308

STANDARD OIL COMPANY (CALIFORNIA) *v.* DIRECTOR
GENERAL, AS AGENT, OREGON SHORT LINE RAIL-
ROAD COMPANY, ET AL.

Submitted April 5, 1924. Decided October 31, 1924

Rate on gasoline, in carloads, from Salt Lake City, Utah, to Baker, Oreg., found unreasonable to the extent that it exceeded the aggregate of intermediate rates. Reparation awarded.

W. O. Banks for complainant.

A. M. Bull for Director General of Railroads, as agent.

REPORT OF THE COMMISSION

DIVISION 3, COMMISSIONERS HALL, CAMPBELL, AND COX

BY DIVISION 3:

Complainant, a corporation, alleges by complaint seasonably filed that the rate exacted on gasoline, in carloads, shipped from Salt Lake City, Utah, to Baker, Oreg., between January 10 and February 29, 1920, was unreasonable and was in violation of the aggregate-of-intermediates provision of section 4 of the interstate commerce act. Reparation is sought.

The shipments moved over the Oregon Short Line and the Oregon-Washington Railroad & Navigation Company lines. The joint commodity rate of 87.5 cents per 100 pounds was collected. That rate exceeded the contemporaneous combination of 79 cents on Weiser, Idaho. A joint commodity rate in the latter amount was subsequently established.

Defendants conceded that the rate charged was unreasonable to the extent that it exceeded the aggregate of the intermediates and introduced no evidence.

We find that the rate assailed was unreasonable to the extent that it exceeded 79 cents per 100 pounds; that complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged thereby in the amount of the difference between the charges paid and those which would have accrued at the rate herein found reasonable; and that it is entitled to reparation, with interest. Complainant should comply with Rule V of the Rules of Practice.

INVESTIGATION AND SUSPENSION DOCKET No. 2183

COMBINATION RULE ON LUMBER FROM CHICAGO AND OHIO AND MISSISSIPPI RIVER CROSSINGS TO C. F. A. TERRITORY, ETC.

Submitted October 23, 1924. Decided November 8, 1924

Proposed restriction of combination rule in connection with rates on lumber and other forest products from Ohio and Mississippi River crossings, Chicago, Ill., and related points, to destinations in central and western trunk-line territories, when used as factors of combination rates, found not justified. Suspended schedules ordered canceled.

Herbert E. Harr and Edwin Kluever for respondents.

D. G. Hitchcock, A. G. T. Moore, and August E. Ernst for Southern Pine Association of New Orleans, La., protestant.

REPORT OF THE COMMISSION

DIVISION 3, COMMISSIONERS HALL, AITCHISON, AND COX

BY DIVISION 3:

By schedules filed to become effective July 15, 1924, and later dates, respondents proposed to restrict the application of the so-called Kelly combination rule, published in Agent Jones's combination tariff I. C. C. No. U. S. 1, in connection with the rates on lumber and other forest products from Ohio and Mississippi River crossings, Chicago, Ill., and related points, to destinations in central and western trunk-line territories, when used as factors of combination rates, in accordance with the following provision:

This rule will only apply in connection with through rates where all the issues publishing factors used in arriving at through rate from original point of shipment to ultimate destination, carry reference to C. F. A. T. B. Freight Tariff No. 228, I. C. C. No. U. S. 1, and authorize an affirmative application thereof.

Upon protest of the Southern Pine Association of New Orleans, La., operation of the schedules was suspended until December 12, 1924, and January 13, 1925, respectively. Protestant's membership lumber from the South and Southwest to the territories of destination covered by the suspended schedules.

We have frequently had occasion to consider matters pertaining to the Kelly combination rule, usually proposals to cancel its appli-

cation. Its genesis, subsequent history, purpose, provisions, temporary character, and obvious undesirability as a permanent tariff rule have been adverted to in *Cancellation of Rule for Combination Rates*, 85 I. C. C. 101, *Cancellation of Combination Rule to the Southwest*, 74 I. C. C. 505, and in other proceedings. Respondents here stated that if the suspended provision is permitted to become effective the final elimination of the Kelly combination rule would not be delayed thereby; that their purpose is merely to clarify their tariffs and to protect themselves against improper claims for overcharges until such time as the combination rule may be canceled; and that no increases in rates would result.

Respondents say that in order to determine the reasonableness of the suspended provision it is necessary to consider the negotiations subsequent to June 25, 1918, the effective date of the increased rates authorized by General Order No. 28 of the Director General of Railroads, leading to the publication of the combination tariff in February, 1919. The railroads were then under Federal control. Copies of correspondence between the railroad administration and this commission, and between the former and its tariff-publishing agents, were introduced in evidence for the purpose of showing that there is no authority in our Tariff Circular 18-A for the filing of a combination tariff unless it is properly connected up with the tariff naming the rates by cross reference; and that if certain rates then in effect or later to be established were not to be subject to the combination tariff it was understood that this was to be accomplished by omitting reference to the combination tariff in the tariffs naming such rates.

The above showing is the basis for respondents' contention that the suspended schedules would not create increased rates. They seek to distinguish (a) the principle announced in *Sligo Iron Store Co. v. W. M. Ry. Co.*, 62 I. C. C. 643, and 73 I. C. C. 551, where the rule providing for the construction of combination rates was published in a tariff naming one of the rate factors, from (b) instances where the rule is published in a separate combination tariff and no reference is made to the latter in connection with one of the factors of a combination rate, although such reference is made in connection with the other factor or factors. Direct reference in the rate tariffs, such as are here under consideration, to a rule in the combination tariff in effect makes such rule a part of the former just as definitely as though it were published therein. It follows that the *Sligo case* principle is controlling in the situation described under (b), *Combination Rates on Agricultural Limestone*, 78 I. C. C. 579; that if, in connection with one of the factors of a combination rate and not with the others, a carrier makes reference to the combina-

tion tariff there is a holding out to the shippers that the through rate constructed in accordance with the combination tariff will be protected by that carrier; and that increased rates would result if the suspended provision is permitted to become effective in instances where no reference is now made to the combination tariff in tariffs containing other rate factors of the combination.

Respondents stress the fact that in several reports we have commented upon the undesirability of the combination rule from a tariff standpoint. They refer to the cooperation and suggestions of our Bureau of Traffic looking to the ultimate elimination of the combination tariff. Those suggestions did not contemplate increases in rates, for which no sound justification is offered, by the cancellation of the combination rule. *Combination Rule on Cotton and Cotton Linters*, 92 I. C. C. 165.

It was admitted by protestant's witness that "the vast majority of the lumber traffic from the points of origin involved in this proceeding move on tariffs which do refer to the combination tariff," but he stated that there are many exceptions. He instanced a few of the latter and said that increased rates would result therefrom if the suspended provision were permitted to become effective.

The suspended provision represents a new attempt on the part of the carriers to avoid the consequences of the lawful, although unintended and unforeseen, operation of the combination rule in instances described hereinbefore under (b). It would cancel the application of the combination rule in so far as traffic moving under such instances is concerned, and would thus increase present rates. We have repeatedly sanctioned the carrier's efforts to eliminate that rule by the publication in its stead of joint or proportional rates, but have denied authority to cancel it where unjustified increased rates would result. *Combination Rule on Livestock*, 92 I. C. C. 205, and cases there cited. Respondents stood upon their contention that the *Sligo case* principle does not control in instances described under (b), and consequently introduced no evidence in justification of any increased rates.

We find that the suspended schedules have not been justified. An order will be entered requiring their cancellation and discontinuing this proceeding.

93 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 2190
EASTBOUND TRANSCONTINENTAL RATES ON INSULATORS

Submitted October 15, 1924. Decided November 5, 1924

Proposed reduced rate on insulators from Emeryville, Calif., and other western points to transcontinental rate Groups F to J, inclusive, found justified. Order of suspension vacated and proceeding discontinued.

T. J. Norton and *F. E. Andrews* for respondents.

Samuel E. Marks for Westinghouse Electric & Manufacturing Company.

L. W. Moore, *E. J. Payden*, and *F. W. Rice* for protestant.

REPORT OF THE COMMISSION

DIVISION 3, COMMISSIONERS HALL, CAMPBELL, AND COX

BY DIVISION 3:

By schedules filed to become effective July 25, 1924, respondents proposed to establish a commodity rate substantially lower than the prevailing class basis on various kinds of insulators and metal accessories, pole brackets, and cross-arm pins, all hereinafter referred to as insulators, in straight or mixed carloads, from Emeryville, Calif., and other western rate-basis 1 points to transcontinental rate Groups F to J, inclusive. Upon protest of the Central Freight Bureau, in behalf of the Illinois Electric Porcelain Company, the operation of the schedules was suspended until November 22, 1924. Rates will be stated in amounts per 100 pounds.

Emeryville is within the switching limits of Oakland, Calif. Speaking generally, transcontinental rate Groups F to J embrace the extreme western portions of Iowa, Missouri, and Arkansas, the southern half of Nebraska, all of Kansas, Oklahoma, and Texas, and the eastern halves of Colorado and New Mexico. The present applicable fifth-class rates are \$2.40 to Group F, \$2.25 to Groups G and H, and \$1.97 to Group J, minimum 36,000 pounds. The proposed commodity rate is \$1.06, minimum 40,000 pounds, to all groups.

Prior to 1923 insulators were not manufactured in the origin territory here considered; none are manufactured in the destination territory. In the latter part of that year the Westinghouse Electric & Manufacturing Company, hereinafter called the Westinghouse

company, which has its principal plants for the manufacture of electrical apparatus and insulators used in connection therewith at East Pittsburgh and Derry, Pa., completed a plant at Emeryville for the manufacture of insulators, chiefly to supply customers throughout the West who purchase their apparatus. The present output of the Emeryville plant is from four to six carloads a month, and this is the only production in rate-basis 1 territory. The Westinghouse company considered the class rates to Groups F to J too high to move the traffic, and apparently few if any shipments have moved under them. It made application to the transcontinental carriers for a rate that would place its Emeryville plant on a basis more nearly equal to the all-rail and rail-water-and-rail rates from eastern producing points to the same territory. The rate suggested was 97 cents, which then and now applies westbound from Groups F to J. The carriers found that rate to be below the normal basis. Therefore, they took as a constructive transcontinental rate eastbound to Group D, which includes most of Illinois and Wisconsin, the rate of \$1.18 applying in the reverse direction and made the proposed rate 90 per cent thereof, the usual basis for constructing rates to points on and west of the Missouri River.

Respondents admit that the proposed rate is depressed by reason of carrier competition, but assert that it is reasonably compensatory and will provide loading for equipment that otherwise would be transported eastbound empty. They exhibit rates from and to the same points on a number of commodities rated fifth class under the western classification which are generally lower than the rate proposed. The Westinghouse company introduced evidence in support of the proposed rate. Among others, it exhibits all-rail rates on insulators of 88.5 cents from East Liverpool, Ohio, a producing point, to the various Texas Gulf ports, 73.5 cents from East Liverpool and 76 cents from Derry to Omaha, Nebr., and \$1.315 and \$1.335, respectively, to Denver, Colo. It states that a rate on insulators of 60 cents applies by water from north Atlantic ports to Texas Gulf ports which, combined with the rail rates to and from those ports, produces materially lower through charges to that portion of the destination territory south of the Oklahoma-Texas State line, and that a substantial volume of tonnage moves under those rates. A rate of 60 cents is also said to apply by water from the Pacific coast ports through the Panama Canal to the Texas Gulf ports.

The Illinois Electric Porcelain Company, hereafter called protestant, manufactures insulators at Macomb, Ill., in transcontinental Group D, and for many years has distributed its products chiefly throughout western territory, including Groups F to J. Its competition has come entirely from the East, among others from the

Westinghouse company, and has been felt most keenly in Texas and the Pacific coast territory. Protestant objects to the establishment of the proposed rate on the ground that it is unreasonably low in comparison with the rates from Macomb to the same territory, and accords undue preference to the Emeryville shipper.

The following table, compiled from the record, shows the rates, short-line distances, and earnings from Emeryville and Macomb to typical destinations. The car-mile earnings are based upon 40,000 pounds, except that from Macomb to Oklahoma City, Kansas City, and Omaha, they are based upon 36,000 pounds. These are the applicable minima and represent the range of average loading of protestant's shipments. In connection with these comparisons consideration should be given to the fact that the \$1.18 rate applies as well to the Pacific coast, yielding earnings as low as 10 mills per ton-mile and 21 cents per car-mile for the short-line distance of something over 2,200 miles from Macomb to San Francisco, Calif.

To—	From Emeryville				From Macomb			
	Short-line distance	Rate proposed	Earnings per car-mile	Earnings per ton-mile	Short-line distance	Rate	Earnings per car-mile	Earnings per ton-mile
	<i>Miles</i>		<i>Cents</i>	<i>Mills</i>	<i>Miles</i>		<i>Cents</i>	<i>Mills</i>
Albuquerque, N. Mex.-----	1,199	\$1.06	35.36	17.67	1,175	\$1.18	40.17	20.08
Galveston, Tex.-----	1,969	1.06	21.53	10.76	1,036	1.18	45.56	22.78
Dallas, Tex.-----	1,937	1.06	21.88	10.94	802	1.18	58.85	20.89
Oklahoma City, Okla.-----	1,782	1.06	23.78	11.89	628	.96	55.03	30.57
Kansas City, Mo.-----	1,916	1.06	22.12	11.06	286	.335	42.16	23.42
Omaha, Nebr.-----	1,766	1.06	24.00	12.00	372	.335	32.42	18.01
Denver, Colo.-----	1,359	1.06	31.19	15.59	910	.915	40.22	20.11

Considering the extensive areas of the respective groups, the proposed rate can not be said to be materially out of line with the present rates from Macomb and other eastern producing points. Only to Texas and New Mexico will the proposed rate be lower than from Macomb but, as protestant admits that it is now compelled to meet in that territory rail-water-and-rail rates that are lower than the proposed rate, it is difficult to understand how that rate will injuriously affect it. Apparently its chief complaint is with respect to the level of the present rates from Macomb, and that question is said to be before us in other proceedings.

We find that respondents have justified the schedules under suspension. An order will be entered vacating our order of suspension and discontinuing this proceeding.

No. 15368

STANDARD BOILER & PLATE IRON COMPANY v. PENNSYLVANIA RAILROAD COMPANY ET AL.

Submitted June 21, 1924. Decided October 31, 1924

Rates on iron and steel articles, in carloads, from Niles, Ohio, to Mexia, Tex., found not unreasonable. Complaint dismissed.

G. M. Stephen and *A. F. McCallum* for complainant.

John T. Bowe for Trinity & Brazos Valley Railway and *John A. Hulen*, receiver; and *H. G. Settle* for Baltimore & Ohio Railroad Company.

A. H. Kiskaddon and *Phil G. Safford* for defendants.

REPORT OF THE COMMISSION

DIVISION 3, COMMISSIONERS HALL, CAMPBELL, AND COX

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant is a corporation manufacturing and fabricating iron and steel at Niles, Ohio. By complaint filed October 18, 1923, it alleges that rates of \$1.255 and \$1.335 charged on steel plates, sheet iron, and tank material, knocked down, in carloads, from Niles to Mexia, Tex., in October and November, 1921, were and are unjust and unreasonable to the extent that they exceeded or exceed 93 cents. We are asked to award reparation and to prescribe just and reasonable rates for the future. Rates are stated in amounts per 100 pounds.

Niles is on the Erie, the Pennsylvania, and the Baltimore & Ohio, about 9 miles west of Youngstown, Ohio. Mexia is on the Southern Pacific and the Trinity & Brazos Valley, about 78 miles south of Fort Worth, Tex. Complainant does not manufacture iron and steel but buys its raw material from mills in the Pittsburgh district. Although the complaint attacks rates from Niles only, the proof developed that all of the shipments on which reparation is asked originated at Youngstown, Pittsburgh, or Johnstown, Pa., and were fabricated in transit at Niles. Complainant's practice has been to ship its products under transit arrangements wherever possible. The transit arrangement provides for the stopping in transit of iron and

93 I. C. C.

steel articles for the purpose of bending, bolting, boring, cutting, drilling, etc. The rate applied is the through rate on the material in its inbound or outbound form, whichever is higher, from point of origin to final destination in effect at the time of shipment from such point of origin, plus a transit charge of 3.5 cents per 100 pounds, and that was the basis applied on these shipments. The assailed rates from Niles were not charged or applicable and their lawfulness will therefore be considered only as of the present and future.

The rates from Niles to Mexia were and are the same as from Pittsburgh. The rates from Johnstown were 2 cents higher than those from Pittsburgh. The rates assailed are published in southwestern lines' tariff, and are based on St. Louis, Mo. Complainant shows the history of the rates on steel plates, sheet iron, and tank material, knocked down, from December 31, 1919, to the present. On steel plates and sheet iron the rate effective December 31, 1919, was 75 cents from St. Louis to Mexia, and the differential from Pittsburgh territory was 19 cents, making a through rate of 94 cents. This rate was increased $33\frac{1}{3}$ per cent on August 26, 1920, and became \$1.255. Effective January 3, 1922, a joint rate of \$1.24 on steel plates and effective January 20, 1922, a joint rate of \$1.23 on sheet iron were published. Effective June 15, 1922, the rates on both steel plates and sheet iron were reduced to \$1.165. Effective September 15, 1922, the rate was reduced to \$1.02, which is the present rate. It is made up of the rate from St. Louis of 73 cents and a differential of 29 cents from Pittsburgh territory. Prior to September 15, 1922, the rates on tank material, knocked down, were somewhat higher than on steel plates and sheet iron. Effective December 31, 1919, the rate on tank material, knocked down, from Niles to Mexia was \$1. On August 26, 1920, this rate was increased to \$1.335. Effective January 10, 1922, it was reduced to \$1.31, effective June 15, 1922, to \$1.165, and effective September 15, 1922, to \$1.02, which is the present rate.

Complainant relies solely upon our findings in *Memphis-Southwestern Investigation*, 55 I. C. C. 515; 77 I. C. C. 473. In the latter report we prescribed a distance scale of rates on articles in the merchant iron and steel list which includes the commodities in question. The territory there under consideration was, in general, the southern half of Missouri and the States of Arkansas and Louisiana west of the Mississippi River. The hauls on complainant's shipments from St. Louis were 811, 828, and 843 miles. The rate prescribed under the joint-line distance scale for distances over 800 miles on articles in the merchant iron and steel list was 59 cents. This rate was made applicable from St. Louis to points in the territory under con-

sideration in that case. As stated, the present rate from St. Louis to Mexia is 73 cents and the differential from Pittsburgh territory 29 cents. In our previous report in that proceeding, 55 I. C. C. 515, we said:

The conclusion is difficult to escape that the differences in transportation conditions generally are not sufficiently marked to necessitate or warrant different levels of class rates in the general region here involved * * *.

Details bearing upon the differences in transportation conditions in the states named are set forth in Appendix No. 2. A careful study of the statistics there given, while showing in some instances marked differences in individual items, leads to the conclusion that, considering all the figures together, a uniform scale of rates could with propriety be applied throughout southern Missouri, Oklahoma, Arkansas, Louisiana, and common-point territory in Texas.

No rates to points in Texas, however, were prescribed in that proceeding.

Defendants state that the reductions in the rates heretofore referred to were voluntarily made by the carriers to meet the competition of rail-ocean-and-rail routes from Pittsburgh territory to Texas common points.

In *Dallas Chamber of Commerce v. A. & R. R. R. Co.*, Docket No. 14880, the question of the propriety of extending the scales of class and commodity rates prescribed in the *Memphis-Southwestern Investigation* into Texas is raised upon a far more comprehensive record. The present record affords no aid in determining this question. Even if we were to conclude that the factor of the rate assailed from St. Louis to Mexia is unreasonable to the extent that it exceeds the rate prescribed in the *Memphis-Southwestern Investigation* for distances over 800 miles on the commodities in question, it does not follow that the rate from Niles to Mexia is unreasonable.

We find that the rate assailed was not and is not unreasonable. The complaint will be dismissed. The finding is without prejudice to any future adjustment which may be made as a result of our findings in *Dallas Chamber of Commerce v. A. & R. R. R. Co.*, *supra*.
93 I. C. C.

No. 13887

COASTWISE LUMBER & SUPPLY COMPANY *v.* PENNSYLVANIA RAILROAD COMPANY ET AL.

Submitted September 22, 1923. Decided November 5, 1924

1. Storage and demurrage charges collected or collectible on lumber at points in New York Harbor, found not unlawful, unreasonable, unjustly discriminatory, or unduly prejudicial.
2. Stringpiece delivery of lumber from floating equipment of defendant to private piers, defined. Present tariff provision therefor required to be modified.

Ernie Adamson and Almy, Van Gordon & Evans for complainant.
George R. Allen for Pennsylvania Railroad Company.
Francis R. Cross for Baltimore & Ohio Railroad Company.

REPORT OF THE COMMISSION

DIVISION 1, COMMISSIONERS McCHORD, ESCH, LEWIS, AND McMANAMY
BY DIVISION 1:

Complainant filed exceptions to the report proposed by the examiner and the parties were heard in oral argument.

Complainant corporation, engaged in the lumber business at New York, N. Y., with a yard at the foot of Clinton Street near the mouth of the Gowanus Canal, Brooklyn, N. Y., by complaint filed May 26, 1922, alleges that charges for the detention of lumber at New York Harbor points, i. e., Manhattan Piers or Meadows Yard, N. J., hereinafter called the Jersey Shore, or at complainant's yard, are unlawful, unreasonable, unjustly discriminatory, and unduly prejudicial. Reasonable rules for the future and reparation are sought, the latter for storage charges assessed for detention of lumber on the Jersey Shore on storage and car-demurrage bases, for demurrage charges assessed or collectible on lumber held in excess of the free time on lighterage equipment at the yard of the complainant, and for labor alleged to have been furnished by the complainant in completing delivery of lumber at its yard. The complainant moved to dismiss without prejudice the complaint against the Baltimore & Ohio Railroad, hence the only defendant is the Pennsylvania Railroad.

The complaint alleges, as the primary causes of the storage, demurrage, and claim for labor, that—

Defendants have failed and refused to provide the necessary and proper labor to effect delivery of the said shipments over the stringpiece of complainant's wharf or dock as is required by tariff, or to separate the shipments.

The stringpiece is the raised outer edge of a dock. Complainant contends that lumber must be delivered from the lighterage equipment of the defendant inside the stringpiece in a "straight and orderly manner," while defendant contends that complete delivery of lumber from such equipment to private piers consists only in passing the lumber across the stringpiece to an assigned space on the dock and that no duty to perform any yard service, such as stacking, piling, or tiering, rests upon it.

Defendant's tariff, effective February 29, 1920, publishing rates and rules governing service by barges and lighters at New York Harbor points provided that after 48 hours from the time the floating equipment reported at destination, Sundays and legal holidays excepted, demurrage charges of \$20 per day should accrue on lighters or barges other than car floats and certain equipment carrying hoisting facilities. An exception provided that when the lighter or barge contained more than 200 tons of freight for one consignee an additional 24 hours' free time would be allowed that consignee for each 100 tons, or fraction thereof, in excess of 200 tons. Effective April 1, 1921, the following provisions were added:

Lightermen shall not be required to deliver or receive freight (except lumber), at a distance of over 100 feet from the gangway of their lighter or barge, and in no case shall they be required to tier or pile freight on the docks, and in case of delay for want of room in which to deliver freight within the distance above mentioned demurrage shall accrue the same as if the consignee ship owner or ship agency were not ready to receive.

Lumber will be delivered to or received only from stringpiece of dock or to or from tackle of vessel.

In case of delay for want of room in which to deliver to stringpiece of dock or to tackle or vessel, demurrage shall accrue the same as if the consignee, ship owner or ship agency were not ready to receive.

Little evidence is directed to the measure of the demurrage charge and none to that applicable to storage, except that it was stated that canal boats, in which lumber is customarily transferred from the Jersey Shore to destination, the harbor, were sometimes rentable, dependent upon supply and demand, at materially less than the amount of the demurrage charge. It is well settled that storage and demurrage charges are not assessed primarily for revenue purposes and, also, that they are not based upon a fair rental value of the equipment, but are rather in the nature of penalties to prevent wasteful and extravagant use of equipment.

It is the contention of the complainant that canal boats are not "Other Lighters or Barges" for the detention of which demurrage is provided and therefore any charge for their detention was illegal.

The lighterage tariff defines lighters or barges, as those terms are used in the tariff to be "Boats for the transportation of merchandise unloaded from, or to be loaded into, cars at a given point."

The secondary causes of complaint are that lumber was not tendered for delivery to the complainant's yard in the sequence of its shipment from the originating points or of its arrival on the Jersey Shore; that lumber was tendered for delivery to the complainant's yard in such accumulated quantities, either as to the amount loaded on a single lighter or as to the number of lighters tendered for delivery at one time, that due to conditions obtaining in the lumber business, particularly the physical handling of the lumber through the yard, complainant was unable to accept delivery; and that 48 hours' free time was not allowed within which to unload a lighter. The physical handling of the lumber through the yard or commercial conditions obtaining in the lumber business are not the transportation conditions determinative of the issue.

These secondary causes of complaint have their base in the unit of shipment of lumber to the Jersey Shore being a carload. Lumber is a lighterage-free commodity and the yard of the complainant is within the free-lighterage limits. The unit of lighterage is one carload. Lumber may be consigned through from point of origin for delivery at complainant's yard. The peculiarity of the delivery service in New York Harbor and the method of handling freight by car floats and lighters is so generally understood and has been so frequently discussed in former cases, that it is deemed unnecessary to describe it here. *Lighterage and Storage Regulations at New York*, 35 I. C. C. 47; *New York Harbor Storage*, 47 I. C. C. 141; *Export Freight Free Time*, 47 I. C. C. 162; *Tidewater Demurrage*, 46 I. C. C. 677; *Handling of Heavy Articles*, 47 I. C. C. 323. Complainant contends that it is entitled as a matter of law to receive its shipments in the order of their arrival on the Jersey Shore and that cars which arrive first and are delivered last should be treated as "run-around cars" when assessing demurrage. Forty-eight hours is usually permitted within which to unload commodities in carloads before demurrage commences to accrue. Since the lumber is held on the Jersey Shore until a boat is loaded complainant contends 48 hours *per car* should be allowed within which to take delivery.

The defendant contends that the storage charges accrued upon the request of the complainant to hold the shipments on the Jersey Shore; that the demurrage accrued because the complainant did not provide berths, pay freight and demurrage charges, and did not provide space for unloading during a period when it was unable to stop shipments then in transit.

Carload shipments for delivery in New York or Brooklyn locally, not consigned to the specific pier are held in or on cars, piers, or warehouses on the Jersey Shore until receipt of written order for disposition from the consignee or party notified of arrival, subject after 48 hours' free time, to car demurrage or storage. Lumber is consigned through from points of origin to complainant's yard. It also purchases lumber consigned to New York, lighterage free, to other persons. There were 286 carloads of lumber handled by complainant in the years 1920, 1921, and 1922. It was notified of the arrival of such cars in 245 instances and other consignees were notified in 41 instances.

The consignee must provide a berth when the car float, lighter, or barge reports at destination. If a berth is not provided or the property is not unloaded within the free time, the property is removable to a warehouse at the cost of the owner, subject to a lien for lawful charges. Complainant admits that it was not at all times able to furnish berths for the boats upon which the demurrage accrued. Under a rule of the demurrage tariff unloading includes payment of lawful freight charges. The property is deliverable only upon payment or satisfactory guaranty of demurrage charges. Complainant was not upon the defendant's credit list until November 8, 1921. The bulk of the demurrage accrued prior thereto. On account of failure promptly to pay freight charges, complainant was subsequently suspended from the credit list and has not since been restored.

On September 29, 1920, complainant wrote a wholesale lumber dealer of New York, as follows:

Will you not kindly hold all shipments that are not in transit until further notice.

We regret having to ask you to do this, but on account of the accumulation of cars now in transit and at the terminals we are obliged to do so.

Again on January 18, 1921, February 7, 1921, and February 15, 1921, and at later dates complainant wrote this dealer and others that owing to the "enormous amount of cars we have now in transit" shipments for its account should be held until further notice, or stated that it would not be able to accept at that time certain named kinds of lumber, for example, box-bark strips. The president and vice president of the complainant, notwithstanding these letters from the traffic manager of the complainant, testified that no orders for lumber had been canceled, and state that the class of lumber that these concerns were shipping to the complainant was not needed at the time the letters were written. Although orders were not canceled, an endeavor was made to postpone the movement of the lumber.

The accumulation on the Jersey Shore became so great that complainant was apprehensive lest the defendant would sell the lumber being held, and the defendant, urgently in need of equipment, was equally apprehensive lest the complainant would reject the shipments. Conferences were held between representatives of the defendant and of the complainant in respect not only of the accumulation on the Jersey Shore, but at complainant's yard. On February 10, 1921, the complainant wrote the defendant that—

From now on you will please accommodate us by issuing instructions to your lighterage department to have delivered to our dock, foot of Clinton Street, Brooklyn, not more than two boatloads of lumber at one time. Should any charges accrue by reason of this order at your terminal in Jersey City on car demurrage this charge to be absorbed by us, but you will kindly keep us advised of any such charges so that we may check same.

In answer to that letter, complainant was advised that the cars held at Jersey City would be subject to car-demurrage charges; that five boats were then under load with lumber which could not be handled under that arrangement, and that there were then 55 carloads of lumber on the Jersey Shore awaiting delivery of two boats then at complainant's dock, on which demurrage of \$500 and \$420, respectively, had accrued. At that time a representative of the complainant called at the division freight office of the defendant, agreed to pay demurrage in full on one boat, requested that arrangement be made to permit the complainant to pay freight charges on one car instead of the boatload, and referred to the impossibility of obtaining loans of money at that time. It is conceded for complainant that during this period it was short of the great amount of freight and demurrage charges necessary to take delivery of the lumber shipments. The leniency of the lighterage agent in connection with the payment of charges is commended, and it is also admitted that in recent instances the rules and regulations of the defendant requiring collection of charges prior to delivery of shipments have been violated. Following this date in February, lumber was delivered to the complainant upon payment of charges for a single carload, although other consignees of lumber in the harbor have not asked for or received a similar concession, and the defendant has endeavored to have no more than two boats at complainant's yard at a time.

The defendant has always been willing to separate from other lumber a particular shipment immediately desired by the complainant if request therefor was received prior to loading on the Jersey Shore. After the boat is loaded several carloads may be superimposed upon the one desired, and it is generally impracticable to deliver a particular carload without notice prior to loading, unless perchance its position on the boat will permit.

Complainant's facilities were such that it could not receive all of the shipments consigned to it. From a list of shipments arriving over the line of the defendant at the Jersey Shore it appears, for example, that in January, 1921, there were 93 carloads of lumber consigned to the complainant as follows: January 7, 9, 26, 28, and 31, one carload; January 17 and 22, two carloads; January 8, 10, 13, 19, 25, 27, and 29, three carloads; January 21 and 24, four carloads; January 15 and 20, five carloads; January 14, seven carloads; January 18, eleven carloads; and January 11, twenty carloads. In addition, complainant was receiving lumber from another rail carrier and via water and, it is stated, was unloading the water craft in preference to defendants' equipment.

A typical instance of the general situation is shown by the *Gascoigne* which reported at complainant's dock February 10, 1921, and was released March 31, 1921, it having been held awaiting payment of charges, paid March 29, 1921. The demurrage was \$900. The boat contained seven carloads of lumber which had originated between January 8 and 20, 1921, both inclusive, between which dates 70 carloads of lumber were consigned to complainant over the line of the defendant. The seven carloads arrived on the Jersey Shore on January 29 and February 1, 1921; notices of their arrival were sent to the complainant on January 27, 29, and 31, and February 1, 1921; the boat was loaded February 4, 5, 7, and 8, 1921. In certain instances the arrivals, antedating arrival at Manhattan Piers, were the dates the cars arrived at Meadows Yard.

In the circumstances disclosed of record it clearly appears that, no matter what course had been followed in respect of transference across the harbor, complainant could not have escaped storage or demurrage. It did not stop the numerous shipments which were being made to it and admittedly it was unable to accept delivery. It is manifest that if the defendant had put a single carload upon one canal boat and that carload has been the first which arrived on the Jersey Shore and a similar course had been followed in regard to all of the other 92 carloads consigned to the complainant in January, it would have been absolutely impossible for the canal boats to have been berthed at complainant's dock, and the same might be said if the 92 carloads had been loaded on 10 canal boats. In *Wholesale Coal Trade Asso. v. Director General*, 58 I. C. C. 15, 33, it was said: "A shipper may offer for shipment all he sees fit, but if he makes more shipments than he can handle it is not the carrier's concern. If demurrage then accrues the shipper alone is to blame."

A typical instance in which both storage and demurrage accrued is shown by a boat which reported at complainant's wharf April 30, 1921. In two letters dated April 23 and 27, 1921, complainant

93 I. C. C.

authorized the defendant to load lighters for delivery with 13 carloads of lumber, giving the car initials and numbers. Ten of these carloads originating in Illinois, North Carolina, South Carolina and West Virginia on various dates between January 18, 1921, and March 9, 1921, arrived on the Jersey Shore between February 12, 1921, and March 31, 1921. Notices of arrival were sent to the complainant on the dates of arrival either at Meadows Yard or Manhattan Piers. Following the receipt of the above letters, a lighter was loaded April 26, 27, 28, and 29, 1921, with the cars specified by the complainant. Freight charges were paid on two cars May 10, 1921; on one May 11; on three May 12, and on four May 13. The lighter was released May 12. Demurrage of \$140 was paid May 13. Over \$2,000 storage had accrued on these cars prior to complainant's requesting their delivery. Certainly the sequence of shipment, of arrival, or the stringpiece rule had nothing whatever to do with the accrual of the storage, which had been directed by the complainant and the storage ceased to run as soon as the defendant received the specific orders to deliver to complainant's yard. It is equally certain that the single carload issue did not affect the accrual of demurrage for at that time defendant was accepting payment of freight charges upon and delivering a single carload and yet complainant permitted 10 days to go by before it paid charges even on a single carload and the non-payment of charges was the cause of the demurrage. If 48 hours had been allowed on each one of these cars, it would have been the same 48 hours as to all of the cars and would not have operated to increase the period of free time. In fact, if the demurrage for the detention was computed on the car-demurrage basis it would greatly exceed that actually assessed on the lighterage basis.

The irregularities resulting from the peculiarity of the location and the exigencies of the various businesses in New York Harbor were taken into consideration in fixing the free time. *Wholesale Coal Trade Asso. v. Director General, supra.* Manifestly, the maritime rule that the last shipment in is the first shipment out must apply to lighterage delivery in the generality of cases notwithstanding the endeavor on the part of the defendant wherever practicable to deliver shipments in the sequence of their arrival on the Jersey Shore. In a busy terminal yard, through which many commodities, including perishable commodities intended for daily consumption in New York, are moved daily, the switching and drilling which would be necessary to separate the oldest car of lumber from all others, would demoralize the terminal operations. The floating equipment of the defendant moves regularly over designated routes in the harbor. Shipments for more than one consignee are frequently loaded on a single boat, and it would be impracticable to require that complain-

ant shall receive lumber in the absolute sequence of its shipment or arrival on the Jersey Shore.

There is nothing of record to indicate that complainant or its lumber traffic is treated any differently from any other dealer in lumber receiving lighterage-free delivery at private piers in New York Harbor or from any other traffic unless that difference of treatment arises from stringpiece delivery, which will now be considered.

Notwithstanding the present stringpiece clause of the lighterage tariff of the defendant provides for the delivery of lumber only "from" or "to" the stringpiece, lumber received all rail on the Jersey Shore and transferred across the harbor in floating equipment is delivered at private piers in two ways: (1) To an assigned space on the dock whence it is removed by the consignee, (2) to vehicles of the consignee, customarily trucks or two-wheeled carts, called "dinkeys," for removal by the consignee. Obviously, both of these methods of delivery are inside the stringpiece. It is the duty of the lighterman in both instances to pass the lumber over the stringpiece to the assigned space on the dock or to the consignee. If the consignee is not present on the dock in person or by representative and a space has been assigned by him for the receipt of the lumber on the dock, it is the duty of the lighterman to pass the lumber across the stringpiece and place it upon the dock. It is not required that the lumber be piled symmetrically, that it be tiered, or that the ends of the pieces of lumber be even, but at least the various pieces of lumber must be approximately parallel lengthwise. There is no custom as to the height of the pile; that is dependent upon the conditions obtaining. No obligation rests upon defendants to place men upon a dock to receive lumber except to the extent necessary to effect delivery thereof in the safe and orderly manner.

Delivery such as that for which complainant contends has been afforded by various steamship lines, such as the Ocean, Savannah, Mallory, and Clyde lines, which are engaged in the coastwise trade, and, also, by the Baltimore & Ohio Railroad Company. The tariff of the latter rail carrier providing lighterage and terminal regulations specifies that the current class or commodity rates applicable on lumber to New York cover only delivery to freight stations. Consignees desiring lighterage delivery must make special arrangements therefor and if that carrier performs the lighterage service, a charge in addition to the rate to New York City stations is provided, which accrues to the delivering carrier in addition to the lighterage deduction of 3 cents per 100 pounds. What special arrangements were made between the Baltimore & Ohio and the

complainant in respect of the delivery of lumber is not disclosed of record, except that that carrier paid the complainant \$8 a car for unloading lumber. The complainant put four men on the boat and six men on the dock and they "threw the lumber on the dock."

In *Mosson Co. v. P. R. R.*, 19 I. C. C. 30, decided in 1910, the defendant's lighterage rules on lumber delivered within the lighterage limits were found not unreasonable or unduly prejudicial, it being stated therein that the carrier makes "delivery of the lumber free of all charges across the stringpiece of the pier." The wording of the demurrage rule there considered was the same in substance as that here considered, although at that time the charges were less. Reference was there made to the rules of the defendant being similar to those of other lines reaching New York Harbor and substantially the same as those then in force in Philadelphia, Pa., and Baltimore, Md.

The present record is limited to consideration of the application of the rules to delivery of lumber from lighterage equipment. It is clear that the present rule of defendant limiting delivery of lumber "to" the stringpiece is not in accord with established custom and practice in connection with such delivery in New York Harbor, and it should be amended to provide for such delivery "across" the stringpiece.

We find that the storage and demurrage charges assailed were not and are not unlawful, unreasonable, unjustly discriminatory, or unduly prejudicial. We further find that the clause in defendant's tariff providing for the delivery of lumber "to" the stringpiece should be amended to provide for such delivery "across" the stringpiece. Defendant will be allowed 60 days in which to modify its tariff to accord with this finding.

No. 15161

SISAL SALES CORPORATION v. BALTIMORE & OHIO
RAILROAD COMPANY ET AL.

Submitted July 21, 1924. Decided October 31, 1924

Rates on sisal, in carloads, from Indianapolis, Ind., to certain points in central territory, western New York, and Ontario, Canada, found not unreasonable. Complaint dismissed.

Isaac Born and O. P. Gothlin for complainant.

F. J. Goebel and A. P. Donadio for defendants.

REPORT OF THE COMMISSION

DIVISION 3, COMMISSIONERS HALL, CAMPBELL, AND COX

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant, a corporation dealing in sisal at New York, N. Y., alleges by complaint seasonably filed that the rates charged on certain carload shipments of sisal from Indianapolis, Ind., to points in central territory, western New York, and Ontario, Canada, during a period of one year beginning July 1, 1922, were and are unreasonable. Reparation and reasonable rates for the future are asked. Rates will be stated in cents per 100 pounds.

During the war there was a heavy importation of sisal for the manufacture of twine. It was stored at certain ports and inland points and distributed to manufacturers as needed. The purchases were financed by banking interests who took the owners' notes secured by chattel mortgages on the sisal. The sudden termination of the war left large quantities on hand for which there was no immediate market. As a result, many owners defaulted on their notes and the banks took over the sisal and created sales corporations to dispose of it for them to the best advantage. Complainant is one of these corporations. It came into being in 1921, and bought the assets and liabilities of the Eric Corporation, apparently an earlier selling agency of the same banking interests.

The movement here considered was at the applicable fifth-class rates and represented the reshipment of sisal which had been imported via Gulf ports and held in storage at Indianapolis for about two years. If it had been shipped out from Indianapolis within a

year, it would have been entitled, under tariffs applicable, to transit on the basis of the joint rates from the Gulf ports to ultimate destination plus a 2.5-cent transit charge. Complainant seeks the establishment of reshipping rates from Indianapolis at 60 per cent of fifth class as a basis for an award of reparation, and to cover any possible future business which does not move out within the transit period. The minimum weight is 24,000 pounds, but complainant would not object to a minimum of 27,000 pounds, the approximate average loading of its shipments. A storage-in-transit arrangement on sisal at Indianapolis has been in effect for about five years. Complainant states that if it had been accorded this arrangement sooner at least some of these shipments could have been moved out within the transit period.

There is no domestic production of sisal. Most of it comes from Mexico, and relatively low import commodity rates apply from Atlantic and Gulf ports to the destinations here considered. There is apparently no movement at class rates except under circumstances such as those surrounding these shipments.

Complainant does not attack the limit of the transit period, which is the same as that maintained in connection with practically all transit arrangements, but urges that as sisal may be stored at the Gulf ports as long as 18 months, and at Atlantic ports indefinitely, and still be entitled to the import rates, the fact that this traffic was held in storage in excess of the one-year period should not justify the application of class rates. The class rates from Indianapolis to the destinations here considered are much higher relatively than the import commodity rates from New Orleans to the same destinations, as may be seen from the following table taken from complainant's exhibits:

To—	From Indianapolis		From New Orleans	
	Distance	Rate	Distance	Rate
	<i>Miles</i>	<i>Cents</i>	<i>Miles</i>	<i>Cents</i>
Auburn, N. Y.	500	42	1,481	53. 5
Brantford, Ontario.....	494	35	1,348	56
Jackson, Mich.	215	26	1,121	45
Miamisburg, Ohio.....	118	20. 5	975	39
Newark, Ohio.....	214	26	1,070	45
Peoria, Ill.	213	26	831	39
Xenia, Ohio.....	126	21	986	39
Indianapolis, Ind.....			889	39

Complainant points out that binder twine, the principal finished product of sisal, moves at sixth-class rates minimum weight 24,000 pounds for a 36-foot car, subject to the graded minimum rule. This rating is provided as an exception to the official classification, the

classification rating being fourth class. Explaining the unusual situation of a finished product taking a lower rate than the raw material, defendants say that about 20 years ago the Boston & Albany established sixth-class rates on binder twine from Boston, Mass., to points in central territory; that to meet the competition other carriers did likewise, and that eventually the application of the sixth-class rates on binder twine became quite general in official territory.

Complainant refers to commodity rates published from certain points, which are shown in the following table, together with the fifth-class rates for similar distances under the C. F. A. class scale.

From—	To—	Distance	Minimum weight	Rate	C. F. A. fifth class
		<i>Miles</i>	<i>Pounds</i>	<i>Cents</i>	<i>Cents</i>
New York, N. Y. (import).....	Auburn, N. Y.....	356	22,000	19	30.5
Do.....	Brantford, Ontario.....	479	27,000	24.5	34
Do.....	Welland, Ontario.....	450	27,000	24.5	34
Chicago, Ill.....	Elgin, Ill.....	37	22,000	8	14.5
Joliet, Ill.....	Akron, Ohio.....	390	22,000	21.5	32
Chicago, Ill.....	do.....	353	22,000	21.5	30.5
Do.....	St. Paul, Minn.....	397	(1)	24.5	32
St. Louis, Mo.....	do.....	600	(1)	27.5	38
Peoria, Ill.....	do.....	490	(1)	24.5	35
St. Louis, Mo.....	La Crosse, Wis.....	474	(1)	24.5	34
Do.....	Eau Claire, Wis.....	646	(1)	27.5	39.5
Indianapolis, Ind.....	Chicago, Ill.....	184	(1)	15	25
Do.....	Michigan City, Ind.....	155	(1)	12.5	23

¹ Visible capacity of car.

The charges on the shipments into Indianapolis were apparently paid by the Eric Corporation, whose assets and liabilities, as above stated, were taken over by complainant. In shipping from Indianapolis complainant sold the sisal f. o. b. Gulf ports. It paid the freight charges on the shipments from Indianapolis but recharged to the purchasers amounts equal to the freight charges at the joint rates from the Gulf ports plus the transit charge. In other words, it absorbed an amount equal to the difference between the charges collected on the basis of the Indianapolis combination and what the charges would have been at the joint rates plus the transit charge. Reparation to the basis of 60 per cent of the fifth-class rates would not fully cover the absorption. Defendants contend that these facts do not prove that complainant is entitled to the award sought.

Defendants point out that sisal is rated fourth class in the western and southern classifications, and compare the earnings on sisal at fifth-class rates with the earnings on various other kinds of fifth-class traffic. These comparisons show that as applied to sisal fifth-class rates yield rather meager earnings.

Complainant does not attack the rating or the class rates as such. In effect it seeks the extension in some degree of the benefit of the

storage-in-transit arrangement to shipments made after the expiration of the transit period. In *Nonsurrender of Inbound Billing*, 73 I. C. C. 455, and *Grain and Flaxseed from Twin Cities*, 78 I. C. C. 575, where the carriers proposed to apply proportional rates, representing reductions, from Minneapolis to Lake Superior ports on grain held in storage at Minneapolis beyond the transit period, we found them not justified.

Upon the record we find that the rates assailed were not and are not unreasonable. The complaint will be dismissed.

93 I. C. C.

No. 14483

NEBRASKA BRIDGE SUPPLY & LUMBER COMPANY v.
ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
ET AL.*Submitted September 12, 1923. Decided October 31, 1924*

Rate on lumber, in carloads, from Lonoke, Ark., to Nowata, Okla., over a circuitous route, found not unreasonable or otherwise unlawful. Complaint dismissed.

H. D. Bergen for complainant.

No appearance for defendants.

REPORT OF THE COMMISSION

DIVISION 3, COMMISSIONERS HALL, CAMPBELL, AND COX

BY DIVISION 3:

Exceptions were filed by complainant to the report proposed by the examiner.

Complainant, a corporation manufacturing and selling rough bridge lumber, piling, etc., alleges by complaint seasonably filed that the rate charged on one carload of oak bridge flooring shipped from Lonoke, Ark., to Nowata, Okla., on October 16, 1920, was unreasonable, and prays reparation. Rates will be stated in cents per 100 pounds.

Lonoke is on the Chicago, Rock Island & Pacific, hereinafter called the Rock Island, 22 miles east of Little Rock, Ark. The shipment moved west over that line to Shawnee, Okla., thence north over the Atchison, Topeka & Santa Fe, hereinafter called the Santa Fe, through Newkirk, Okla., to Winfield, Kans., thence over the Missouri Pacific east to Coffeyville, Kans., and south to Nowata, 610 miles. The rate applicable was 59.5 cents made by combination of the commodity rates to and from Winfield. These rates were 40.5 cents to Winfield and 23.5 cents beyond. Under the applicable combination rule the through rate was made by reducing those rates to 35.5 and 19 cents, respectively, and adding 5 cents to the sum of the factors. The rate charged was 58 cents and complainant concedes that there is an outstanding undercharge of 1.5 cents per 100 pounds.

The direct route from Lonoke to Nowata is over the Rock Island to Little Rock and the Missouri Pacific beyond, 326 miles. The

shipment was originally consigned to Deer Creek, Okla., a local point on the Santa Fe. Its sale there was canceled and complainant directed diversion to Nowata but it had passed Little Rock and Shawnee before this could be effected.

Contemporaneously commodity rates of 32.5 cents from Lonoke to Kansas City, 784 miles, and 23.5 cents from Kansas City to Nowata, 220 miles, were in effect. Under the combination rule the through rate on the basis of these factors would have been 51.5 cents. Complainant computed this rate as 51 cents and at the hearing sought reparation to that basis. In its exceptions to the proposed report it seeks to substitute therefor a basis of 45 cents.

The shipment did not move through Kansas City, and the 32.5-cent rate did not apply over the Rock Island to Shawnee and the Santa Fe beyond.

A joint commodity rate of 38 cents applied over the direct route from Lonoke to Nowata. Complainant points out that over the same route a joint commodity rate of 32.5 cents was in effect from Lonoke to Coffeyville, Kans., a farther distant point, and urges that the 38-cent rate is thus too high to be used as a proper comparative measure of the rate applicable over the route of movement.

Complainant contends not only that the through rate was unreasonable, but also that the rates to and from Winfield used in making the through rate were unreasonable. It compares the 59.5-cent rate to Nowata and the 40.5-cent rate to Winfield, 610 and 493 miles, respectively, with a rate of 39 cents from Lonoke to Sioux City, Iowa, and Omaha, Nebr., 1,081 and 980 miles, respectively, and refers also to rates from Alexandria, La., a lumber-shipping point, of 44 cents to Winfield, 714 miles; 39 cents to Kansas City, 817 miles; 42.5 cents to Omaha, 1,016 miles; and 45 cents to Sioux City, 1,117 miles. It compares the 23.5-cent rate from Winfield to Nowata, 117 miles, with rates ranging from 13.5 to 17 cents for distances ranging from 113 to 130 miles from Kansas City to certain points in Kansas, Nebraska, and Missouri, and under distance scales intrastate in Kansas, Missouri, and Arkansas and interstate between Kansas and Missouri.

The 45-cent basis for reparation sought by complainant in its exceptions to the proposed report is the result of the application of the combination rule to the rates which complainant contends would have been reasonable, 32.5 cents to Winfield and 15.5 cents beyond. As previously stated, the 51-cent basis first sought by complainant was based largely upon the Kansas City combination. It now points out that for the distance of 443 miles over the direct route from Lonoke to Winfield the 40.5-cent rate yielded 18.3 mills per ton-mile and urges that, as the haul over that route to Coffeyville is only 94 miles less, a spread of 8 cents is too great. But the 40.5-cent rate does

not apply over the direct route of the Rock Island and Missouri Pacific via Little Rock.

Complainant urges that, as the rates to and from Winfield had been increased since January 1, 1910, the burden of proof to justify those rates was upon defendants, that as there was no appearance for defendants at the hearing this burden has not been met, and that it is, therefore, entitled to an award of reparation. But before we can here find that complainant is entitled to reparation we must find that the rate is unreasonable, and the fact that no evidence was offered on behalf of defendants does not preclude us from determining whether or not the rate was in fact unreasonable.

This shipment was unusual and moved over a circuitous three-line route at the instance and for the convenience of complainant. Future shipments over that route are not contemplated and for aught that appears of this record are improbable. The shipment weighed 68,700 pounds and yielded ton-mile and car-mile earnings of 19.5 mills and 67 cents, respectively, at the applicable 59.5-cent rate. The ton-mile earnings are somewhat higher than those shown by complainant under the other rates to which it referred, but they can not be said to have been excessive for the service performed. The 38-cent rate applicable over the direct route would have yielded corresponding earnings of 23.3 mills and 80 cents. A rate of 32.5 cents over that route would have yielded 20 mills and 68.5 cents.

We find that the applicable rate of 59.5 cents was not unreasonable. The complaint will be dismissed.

93 I. C. C.

No. 13648

SOL DICKERSON ET AL. *v.* DIRECTOR GENERAL, AS
AGENT, CAMAS PRAIRIE RAILROAD COMPANY,
ET AL.

Submitted February 15, 1924. Decided October 17, 1924

Rates on livestock, in carloads, between points in Oregon, Idaho, Washington, Utah, and Montana, found not unreasonable or otherwise unlawful. Complaint dismissed.

Arthur M. Geary for complainants.

John F. Finerty and *M. G. de Quevedo* for Director General of Railroads, as agent.

George T. Reid, *C. H. Winders*, *B. W. Scandrett*, and *L. B. da Ponte* for carrier defendants.

REPORT OF THE COMMISSION

DIVISION 3, COMMISSIONERS HALL, CAMPBELL, AND COX

By DIVISION 3:

Exceptions were filed by complainants to the report proposed by the examiner.

Complainants are shippers of livestock in the States of Oregon, Idaho, Montana, Utah, and Washington. They allege that during the period December 31, 1919, to March 20, 1921, they were subjected to rates on straight and mixed carloads of livestock that were unreasonable, unjustly discriminatory, and unduly prejudicial. Cause No. 5389, brought before the Department of Public Works, State of Washington, and presenting similar issues as to intrastate traffic in that State, was heard jointly with this proceeding. A member of that department sat with the examiner at the hearing. The prayer is for reparation. Many shippers intervened in support of complaint.

Prior to December 31, 1919, rates on livestock in the Northwest were published in amounts per car, regardless of weight. Subsequent thereto during the period specified they were constructed on the basis of cents per 100 pounds. It is said that this change was not made for the purpose of increasing rates on livestock but to secure more uniformity in them and to remove the incentive for overloading. In changing from the basis per car to cents per 100 pounds the Director General of Railroads used the prevailing rates in amounts per standard car of 36 feet 6 inches, inside measurement,

and divided them by 24,000, 17,000, 25,500, 12,000, and 22,000 pounds to arrive at the rates in cents per 100 pounds on cattle, hogs in single-deck cars, hogs in double-deck cars, sheep in single-deck cars, and sheep in double-deck cars, respectively. These weights were then published as carload minima, except that on the Great Northern the minimum on cattle was 22,000 pounds.

This change in the method of making rates on livestock, and the weights used as divisors in determining them, caused general dissatisfaction among shippers in the Northwest and many protests were made to the director general. Accordingly, in February, 1920, the carriers were instructed by him to revise the rates on cattle, using 26,000 pounds as the basis instead of 24,000. Federal control terminated before these orders were complied with, but the carriers in a subsequent reduced-rate application asked authority from us to return to the basis per car. Complainants contend that this was tantamount to an acknowledgment by the carriers that the rates on the basis of cents per 100 pounds were unreasonable. Defendants deny this and say that the change was made partly as a concession to the urgent demands of the shippers and partly because of the expense of weighing each shipment, which had to be borne by the carriers. We approved this application and by March 20, 1921, all of the defendant carriers had restored the former basis of rates.

Counsel for defendants, both in their answers to the complaint and at the hearing, questioned the right of opposing counsel to represent many of the shippers named as complainants. They also contended that many of the claims presented are barred by the statute of limitations. But as they admit that at least some of the shippers named are bona fide complainants and that some of the claims are not barred by the statute we may proceed to consider the issues without passing upon the jurisdictional question as to individual complainants and claims.

Complainants contend that the change from the basis per car was made by the director general arbitrarily and without investigation. They say that the rates resulting from the use of 24,000 pounds as a divisor were from 9 to 18 per cent higher than the former rates. Certain of the complainants testified that the actual loading weight of their cattle was greatly in excess of 24,000 pounds and that the rates established resulted in increases of \$20 to \$30 per car, depending upon the length of haul. For the purpose of showing that the average loading of cattle in the Northwest was in excess of 24,000 pounds complainants had a check made of the weight of cattle and hog shipments, in carloads, which arrived at North Portland, Oreg., during a period of either four or six months just prior to December 31, 1919. This check showed the receipt of 1,881 cars of cattle,

average weight per car 26,719 pounds, and 350 cars of hogs, average weight per car 17,598 pounds. The check was made from records of commission merchants doing business at North Portland. It is of doubtful probative value, however, for, as indicated above, complainants could not say whether it covered a period of four or six months; nor did it show the size of the cars or the numbers and initials from which their dimensions might have been determined. We are, therefore, unable to determine accurately how many of the cars were of standard measurements, although witnesses for complainants expressed their conviction that practically all of them were 36-foot 6-inch cars. In this connection, also, defendants contend that the check is of doubtful value, since it does not purport to show all cars received at North Portland during this period or to give the weights of the individual cars. They say that the check may have included many excessively loaded cars, which, if true, would result in an improper average for cars properly loaded.

Defendants insist that the change inaugurated by the director general was made after the most careful and painstaking investigation at such places as Chicago and other large markets where accurate weight records were obtainable. They maintain that no perceptible increase in rates resulted from this change. They meet complainant's contention that the average loading of cattle is in excess of 26,000 pounds per standard car with figures compiled by the Western Weighing & Inspection Bureau and inspectors of the carriers, which show that the average loading of cattle throughout the United States is less than 24,000 pounds per standard car. It is conceded that many carload shipments of cattle in the Northwest and in other parts of the country weigh in excess of 24,000 pounds, but it is also said that many shipments weigh less than this figure and that the average is even less than the weight used by the director general as a divisor.

Complainants apparently depend almost entirely upon their showing of an increase in the rates under the basis of cents per 100 pounds to establish unreasonableness. They furnish no comparisons by which reasonableness may be judged. Defendants point out that in *National Live Stock Exchange v. A. A. R. R. Co.*, 69 I. C. C. 125, we found upon a comprehensive record that the average weight of shipments of cattle, including some double-deck and extra-size cars, received at the Union Stock Yards, Chicago, from 1913 to 1920, inclusive, was 23,030 pounds, and that we said in the same report that there is little difference in the weight of eastern and western stock. But even if it be granted that increased rates did result as contended, this alone would not prove them unreasonable, for, as suggested by defendants, increased rates might have been justified by the in-

creased cost of transportation and the increased value of livestock during the period under consideration.

Complainants introduced exhibits to show that the inauguration of the basis of cents per 100 pounds from stations such as Weiser, Idaho, and Ashland, Oreg., while rates to the east and south remained on the basis per car, resulted in undue prejudice. Again, complainants are confronted with the necessity of proving that the change did, in fact, result in increased rates before they can establish the contention that they were unduly prejudiced. Defendants point out that, using the car-mile test, the rate from Ashland to North Portland, which was on the basis of cents per 100 pounds and which is used as an illustration by complainants, produced less earnings per car-mile than the rate from Ashland to San Francisco where the basis per car was in effect. Complainants' comparisons of the rates complained of with certain rates found reasonable by us in central and eastern territory is hardly a conclusive test; certainly the mere fact that lower rates prevail in the East than in the Northwest is not proof of undue prejudice when the difference in transportation conditions is borne in mind. There is no evidence of unjust discrimination under section 2 of the act.

Defendants compare the rates assailed with contemporaneous rates on lumber and grain in the same territory and show that the earnings per car and per car-mile on these commodities were considerably higher than on livestock. Lumber and grain are probably the only commodities produced in the Northwest which move in volume comparable to that of livestock and while it is true that they are entirely different, the lighter loading, the return-empty movement, the loss of loading space, and the expedited service required in the transportation of livestock must be considered.

In *Carstens Packing Co. v. Director General*, 68 I. C. C. 125, we passed upon practically the same issues as those presented in the instant case and found the rates not unreasonable. In fact, the complaint alleges in paragraph 14 that "the same tariffs and in a large measure the same issues and similar shipments, and except for the Southern Pacific Company, the same defendants are involved as in this case." Apparently the only difference is the fact that in the case cited the mixed-carload rule was not considered.

It is probably true, as contended by complainants, that the enforcement of the mixed-carload rule, which provides in substance that in mixed-carload shipments the highest rate and highest minimum applicable to any class of stock contained in the car shall govern, did result in increased charges on this particular class of shipments, but it is not shown that even these increased charges were unreasonable. This was the usual method of computing rates on

mixed carloads both in this and in other territory throughout the United States and its application to livestock shipments had previously been approved by us. In *National Live Stock Exchange v. A., T. & S. F. Ry. Co.*, 81 I. C. C. 305, decided July 2, 1923, we prescribed a different rule for the future for application generally speaking throughout the United States. This finding was not intended to apply retroactively and does not establish unreasonableness in the past with respect to the shipments here considered.

We find that the rates assailed were not unreasonable or otherwise unlawful. The complaint will be dismissed. An appropriate order will be entered.

93 I. C. C.

No. 15341

C. F. CARPENTER v. CENTRAL VERMONT RAILWAY
COMPANY ET AL.

Submitted September 11, 1924. Decided October 31, 1924

Rate charged on a carload of granite monuments from Northfield, Vt., to Anderson, Ind., found not applicable. Reparation awarded.

F. D. Roberts and *C. D. Rotruck* for complainant.

No appearance for defendants.

REPORT OF THE COMMISSION

DIVISION 3, COMMISSIONERS HALL, CAMPBELL, AND COX

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant is an individual dealing in monuments at Anderson, Ind. By complaint filed July 19, 1923, as amended, he alleges that the rate charged on one carload of granite monuments shipped December 31, 1920, from Northfield, Vt., to Anderson was unreasonable, unjustly discriminatory, and illegal. Reparation is sought. The claim was filed informally September 7, 1922. Rates will be stated in cents per 100 pounds.

The measure of the rate charged is not assailed, and the only question presented is as to its applicability. The shipment was billed as boxed granite monuments. It weighed 66,000 pounds and charges of \$346.50 were collected at the fifth-class rate of 52.5 cents. There were contemporaneously in force on granite blocks, slabs, or pieces, commodity rates of 31 cents when "rough quarried, chiseled, dressed, hammered, sawed or otherwise finished," and 35.5 cents when "carved, lettered, polished or traced," subject to a declaration by the shipper that the actual value of the shipment was not in excess of \$2.25 per 100 pounds. The bill of lading, which apparently was an old form printed by the consignor to conform to previous tariff provisions, carried a printed notation, viz, "Valuation restricted to 40 cents per cubic foot." This restricted value was less than \$2.25 per 100 pounds. The shipment consisted of rough granite and fell within the description of the material on which the commodity rate of 31 cents applied. Complainant contends

that this rate was applicable. The actual value of the granite comprising the shipment exceeded the limited value specified in the tariff, but defendant had not been authorized or required by us to maintain rates on granite dependent upon the declared or agreed value thereof, as provided in section 20 (11) of the interstate commerce act.

Defendants were not represented at the hearing, but the informal file was made a part of the record in this case. Their position, as disclosed by this file, is in substance that the value restriction attached to the commodity rates was not intended as a limitation on their liability, but was to fix the dividing line between finished and unfinished granite.

This case is similar in principle to *U. S. Industrial Alcohol Co. v. Director General*, 68 I. C. C. 389, in which we found that rates on articles of stated value, which were not authorized by us, were legal, but that the declarations of value, which indirectly limited the carriers' liability, were unlawful and void under the second Cummins amendment. To the same effect is *Bloom & Co. v. Director General*, 80 I. C. C. 283, in which rates on granite from Vermont were considered. The limitations as to value in connection with the commodity rates here considered were unlawful and void.

We find that the commodity rate of 31 cents was applicable to complainant's shipment; that complainant made the shipment as described and paid and bore the charges thereon; that he was overcharged and damaged thereby in the amount of the difference between the charges paid and those which would have accrued at the rate herein found applicable; and that he is entitled to reparation in the sum of \$141.90, with interest. An appropriate order will be entered.

No. 15143

DEWEY PORTLAND CEMENT COMPANY v. ATCHISON,
TOPEKA & SANTA FE RAILWAY COMPANY ET AL.

Submitted May 3, 1924. Decided October 31, 1924

Rate on imported flint pebbles, in carloads, from New Orleans, La., to Dewey, Okla., found unreasonable. Reparation awarded.

Raymond W. Moore and *B. L. Glover* for complainant.

F. H. Moore and *G. H. Muckley* for defendants.

REPORT OF THE COMMISSION

DIVISION 3, COMMISSIONERS HALL, CAMPBELL, AND COX

BY DIVISION 3:

Exceptions to the report proposed by the examiner were filed by complainant and defendants, and those of the latter were replied to by complainant.

Complainant, a corporation, manufactures cement at Dewey, Okla. By complaint seasonably filed it alleges that the rate of 55 cents, which included absorption of part of the tollage charges at New Orleans, La., on 10 carloads of imported flint pebbles shipped from New Orleans to Dewey during 1920, was unreasonable to the extent that it exceeded a rate of 28 cents, including absorption of all tollage charges. We are asked to award reparation. Rates and tollage charges are stated in cents per 100 pounds, and per net ton, respectively.

The shipments were imported from France and moved from New Orleans over the short-line route of defendants, namely, the Louisiana Railroad & Navigation to Shreveport, La., the Kansas City Southern to Panama, Okla., the Midland Valley to Tulsa, Okla., and the Atchison, Topeka & Santa Fe to Dewey, 734 miles. Eight carloads, aggregating 543,600 pounds, were delivered at Dewey on May 5, 1920, and the remaining two, aggregating 124,800 pounds, on July 12, 1920. Freight charges were collected in the sum of \$3,676.20 at a domestic class D rate of 55 cents. Defendants absorbed 5 cents out of the tollage charge of 15 cents, and the unabsorbed tollage charges paid by complainant aggregated \$34.23. This charge appears to be imposed by the port authorities of New Orleans in order to cover the cost of handling over the public docks

from ship side to cars. Defendants contend that the applicable rate over the route of movement was 61 cents, composed of factors of 50 cents to Tulsa and 11 cents beyond. No undercharge claims have been presented, and they are now barred by the statute of limitations. In view of that fact and of the findings, it is not necessary to determine the applicable rate. Defendants do not deny that the rate charged applied over the various other routes of materially longer distances.

For many years flint pebbles have been rated class D in the western classification, but, prior to December 31, 1919, import commodity rates applied from New Orleans to Dewey. The rate charged came about through the cancellation on that date of the import commodity rate of 33 cents and an increase of 6 cents on February 16, 1920, in the class D domestic rate of 49 cents which became applicable upon cancellation of the import rate.

Complainant refers to the rate of 28 cents on natural stone or grinding pebbles, in carloads, from Arvada, Mount Olivet, Wiggington, and Golden, Colo., average distance approximately 73½ miles, prescribed in *Dewey Portland Cement Co. v. Director General*, 60 I. C. C. 609. In that case, decided February 26, 1921, we found not unreasonable combination rates charged from December 28, 1917, composed of class D rates to Denver, Colo., and commodity rates beyond, of 24 cents from Arvada and 25 cents from the other points prior to June 25, 1918, and 30 cents and 31.5 cents, respectively, on and after that date, but prescribed for the future rates from all points of 28 cents plus the general increase of 1920. It appears that the class D rates from Golden and Denver became 48 cents and 41.5 cents, respectively, under the general increase of 1918. The contemporaneous commodity rate from Denver was 25 cents.

The rate assailed and that sought, and the earnings per car and per car-mile thereunder, are contrasted with lower rates and earnings on numerous commodities, chiefly from New Orleans to various destinations throughout Oklahoma, Arkansas, Kansas, Missouri, Nebraska, Iowa, Minnesota, Kentucky, Illinois, Indiana, and Ohio. Many of these comparisons are of little value because no movement is shown, or because earnings on the other commodities are computed at the minimum weights, which are clearly less than actual loadings, as compared with earnings on the traffic here considered which are computed on the average weight. The value of the other comparisons is impaired because it is evident that the rate adjustments on such commodities as asphalt, blackstrap molasses, salt, cement, walnut logs and lumber, and rice bran, for example,

must necessarily be affected by circumstances entirely different from those surrounding the movement of flint pebbles.

Complainant particularly emphasizes a comparison with rates on imported flint pebbles from New Orleans to Kansas City, Mo.-Kans., 868 miles over the short route. The import commodity rate of 26 cents, which applied from and to these points prior to December 31, 1919, was canceled on that date, leaving applicable the class D import rate of 30 cents. The latter rate applied over various lines during the period here considered, but not through Dewey over the route of movement thereto. Over that route a class D import rate of 31.5 cents applied under exceptions provided by the Kansas City Southern. Thus the contemporaneous rates from New Orleans were 25 and 23.5 cents, respectively, lower to Kansas City than to Dewey, although the difference in distance over the short routes is in favor of Dewey by approximately 134 miles. Complainant contends that this difference warrants a rate to Dewey 2 cents less than the contemporaneous rate of 30 cents to Kansas City. Effective June 10, 1922, an import commodity rate of 40 cents was established from New Orleans to Dewey over the route of movement. At that time the applicable class D import rate from New Orleans to Kansas City, Kans., through Dewey was 40 cents.

Pebbles are used by complainant for pulverizing the clinker from which cement is manufactured. Its annual requirements are not disclosed, but the quantity used has diminished somewhat in recent years because of the substitution of iron nut punchings, bar clippings, etc. Complainants obtained its pebbles from Europe prior to the World War and from Colorado during that period. The shipments in issue constitute the only pebbles imported subsequently. The 33-cent import commodity rate to Dewey was canceled on account of no movement, under the general policy of the Director General of Railroads with respect to unused rates. These shipments were purchased in December, 1919, and shortly thereafter, but, before they left France, complainant applied to the United States Railroad Administration for the reestablishment of the previously existing import commodity rate. The application was approved by the appropriate freight traffic committee but no further action was taken because of the short time intervening before the termination of Federal control. In the early part of 1922 complainant contemplated importing additional supplies of pebbles, and the establishment of the import commodity rate of 40 cents on June 10, 1922, apparently resulted from a request made at that time to carriers, other than defendants, who could have participated in the movement. That rate has since applied, subject to the general reduction of 1922, over defendants' lines.

Defendants introduced no comparative data in support of the reasonableness of the rate charged. They seek to justify the increase on December 31, 1919, of 66 $\frac{2}{3}$ per cent in the previously existing rate on the ground that the volume of movement did not warrant continuance of the commodity rate, and that the classification basis charged was therefore proper and reasonable. Thus they show that the total imports of flint pebbles during 1920 did not exceed 800 carloads; that complainant has made no shipments since the present commodity rate was established; and that the volume of future movement under that rate is uncertain. They also point out that there is no attack upon the classification rating or upon the class D rate as such.

The value of the shipments was \$18.50 a long ton f. o. b. New Orleans; their average weight was 66,840 pounds; and they suffered no loss or damage in transit. The earnings were high for such traffic, being 15 mills per ton-mile and, using the average loading, 50 cents per car-mile and \$367.62 per car. A rate of 30 cents would earn 8.17 mills, 27.31 cents, and \$200.52, respectively.

The rates to Dewey and Kansas City prior to December 31, 1919, and at the present time included and include absorption of all tollage charges. As a general rule the import rates of the carriers serving New Orleans include absorption of all of such charges.

We find that the rate assailed was unreasonable to the extent that it exceeded a rate of 30 cents per 100 pounds, including absorption of a tollage charge of 15 cents per net ton; that complainant made the shipments as described and paid and bore the freight and unabsorbed tollage charges thereon; that it has been damaged thereby in the amount of the difference between such charges paid and those which would have accrued at the rate herein found reasonable; and that it is entitled to reparation in the sum of \$1,705.23, with interest.

An order awarding reparation will be entered.

INVESTIGATION AND SUSPENSION DOCKET No. 2232

CEMENT PLASTER FROM PYRAMID AND SWEETWATER,
TEX., TO ST. LOUIS SOUTHWESTERN RAILWAY STA-
TIONS IN ARKANSAS, ILLINOIS, AND MISSOURI

Submitted October 4, 1924. Decided November 5, 1924

Proposed cancellation of joint commodity rates on cement plaster, in carloads, from Pyramid and Sweetwater, Tex., to destinations in Arkansas, Louisiana, Missouri, and Illinois on the St. Louis Southwestern Railway, found not justified. Suspended schedules ordered canceled and proceeding discontinued.

G. S. Trowbridge for St. Louis Southwestern Railway Company, respondent.

D. J. Murphy for Southwestern Freight Bureau.

J. F. Beran for United States Gypsum Company, protestant.

REPORT OF THE COMMISSION

DIVISION 3, COMMISSIONERS HALL, CAMPBELL, AND COX

BY DIVISION 3:

By schedules filed to become effective September 12, 1924, respondents proposed to cancel the joint commodity rates named in Agent Leland's I. C. C. No. 1636 on cement plaster, in carloads, from Pyramid and Sweetwater, Tex., to destinations in Arkansas, Louisiana, Missouri, and Illinois on the St. Louis Southwestern, hereinafter called the Cotton Belt, leaving in effect higher combinations of intermediate rates. Upon protest of the United States Gypsum Company, manufacturing cement plaster at Pyramid, the operation of the schedules was suspended until January 10, 1925. Rates will be stated in cents per 100 pounds.

Pyramid is on the Texas & Pacific 199 miles west of Fort Worth, Tex. Sweetwater is approximately 3 miles west of Pyramid on the Texas & Pacific and the Kansas City, Mexico & Orient. The tariff above referred to names joint commodity rates on cement plaster, in carloads, from Pyramid, Sweetwater, and other Texas points in the same vicinity, such as Plasterco and Hamlin, on the Kansas City, Mexico & Orient 32 and 35 miles, respectively, north of Sweetwater and Acme, north of Hamlin and 192 miles northwest of Fort Worth by way of the Fort Worth & Denver City, to various destinations throughout the territory east of the Rocky Mountains, including the

points on the Cotton Belt here considered. Prior to November 12, 1923, joint rates applied from the other Texas points, but from Pyramid and Sweetwater the rates were made on combination of intermediates. Effective on that date, which was some five months prior to the completion of protestant's plant, the joint commodity rates in force from the other Texas points to the various destinations were established from Pyramid and Sweetwater, and have been subsequently continued on that basis. The suspended schedules propose to cancel only such of these joint rates as apply from Pyramid and Sweetwater to points on the Cotton Belt.

The joint rates from Pyramid and Sweetwater to points on the Cotton Belt were established contrary to instructions furnished Agent Leland by that line, and the proposal to cancel them is made at its request for the purpose of correcting an error in tariff publication. That is the sole justification offered, although it is pointed out that, notwithstanding the proposed cancellation, joint rates are available to protestant over other routes to competitive points served by the Cotton Belt.

The present joint rate from Pyramid and the other Texas points is 26.5 cents to a majority of points on the Cotton Belt. The proposed rate from Pyramid and Sweetwater to the same points is generally 35.5 cents. As stated, no change is proposed in the rates from the other Texas points, at which are located cement-plaster manufacturing plants with which protestant competes in the sale of its product. Such a rate disadvantage would exclude protestant from markets at local Cotton Belt points. Even though protestant would be able to reach competitive points at equal rates, it would not enjoy as liberal routing privileges as its competitors. Protestant is as favorably situated with respect to distance as are its competitors, and no reason appears why it should not have the same basis of rates.

We find that respondents have not justified the proposed schedules. An order will be entered requiring their cancellation and discontinuing this proceeding.

INVESTIGATION AND SUSPENSION DOCKET No. 2191

GLASS BOTTLES FROM CHATTANOOGA, TENN., TO
MEMPHIS, TENN.

Submitted September 10, 1924. Decided November 8, 1924

Proposed increased rates on glass bottles, in carloads, from Chattanooga, Tenn., to Memphis, Tenn., found justified. Order of suspension vacated and proceeding discontinued.

H. L. Walker and *R. B. Gwathmey* for respondents.

John S. Fletcher for protestants.

REPORT OF THE COMMISSION

DIVISION 3, COMMISSIONERS HALL, CAMPBELL, AND COX

BY DIVISION 3:

By schedules filed to become effective July 25, 1924, respondents proposed to increase their rate on glass bottles, in carloads, from Chattanooga to Memphis, Tenn. Upon protest of the Chattanooga Manufacturers Association, of Chattanooga, operation of the schedules has been suspended until November 22, 1924. Rates will be stated in cents per 100 pounds.

The present rate is 35 cents, and it is proposed to increase this rate to 40.5 cents, the same as the rate in effect from St. Louis, Mo., to Memphis. When commodity rates were first established on glass bottles from Chattanooga to Memphis they were made, for competitive reasons, the same as the rates then maintained from St. Louis. In 1915 these rates were 20 cents. A rate of 18 cents was then in effect from Evansville, Ind., to Memphis. The short-line distance from Chattanooga to Memphis is 313 miles. This is over the Southern Railway, an interstate route. From St. Louis the short-line distance is 305 miles, and from Evansville 312 miles. Glass bottles were then being manufactured at Sapulpa and Okmulgee, Okla., and from those points rates of 23 cents were in effect to Memphis for hauls of 464 and 432 miles, respectively. From Muskogee, Okla., another manufacturing point, 393 miles from Memphis, the rate was 44 cents, later reduced to 23 cents.

Memphis is in the so-called Mississippi Valley territory, hereinafter referred to as the Valley. For many years rates were maintained to that point from St. Louis, the Ohio River crossings,

and related points, on a low basis, in order to meet water competition on the Ohio and Mississippi Rivers. The rates to interior Valley points were on a somewhat higher level, being made generally arbitraries over the river points. As a result of *Fourth Section Violations in the Southeast*, 32 I. C. C. 61, the rates on glass bottles from St. Louis and Evansville to Memphis were increased to 23 and 21 cents, respectively, effective June 1, 1916. No change was then made in the rates from Chattanooga to Memphis, work on a readjustment being interrupted by the coming of Federal control. Thus the original relationship between the Chattanooga and St. Louis rates became disrupted. Under the general rate increase of June 25, 1918, the rates from St. Louis and the Oklahoma points mentioned became 29 cents, from Evansville 26.5 cents, and from Chattanooga 25 cents. Under the general rate increases of August 26, 1920, the rates from St. Louis were increased to 36.5 cents; from Evansville, to 33 cents; from the Oklahoma points, to 39 cents; and from Chattanooga, to 31.5 cents.

Effective April 1, 1922, following Investigation and Suspension Docket No. 1303, *Rates to, from, and between Points South of Ohio River*, 64 I. C. C. 107 and 306, hereinafter referred to as *I. and S. 1303*, a general readjustment was made in rates from St. Louis and the Ohio River crossings to points in the Valley, increases being made in depressed rates to the Mississippi River points and the Gulf ports to the extent necessary in order to preserve revenues of the carriers and bring the rates into conformity with the fourth section of the act. Although in that decision we did not prescribe rates on glass bottles, these rates from both St. Louis and Evansville to Memphis were increased to 45 cents. Substantial reductions were made in rates to interior Valley points. The general level of rates prescribed in this proceeding was somewhat lower than that which obtained in the Southeast, and fourth-section relief was granted the lines operating through that territory to lower-rated points in the Valley.

Under the general reduction of July 1, 1922, the rates from St. Louis and Evansville became 40.5 cents and from the Oklahoma points 35 cents, as at present. The Chattanooga rate became 28.5 cents. On September 20, 1923, the carriers attempted to restore the original relationship by increasing the Chattanooga rate to 40.5 cents, the St. Louis basis, but on protest of shippers the proposed rate was suspended. Investigation and Suspension Docket No. 1919. On conference between the interested parties the carriers agreed to withdraw the proposed rate, and as a temporary measure, establish and maintain the same rate as in effect from Oklahoma points, pending a contemplated revision in the latter rates. A 35-cent rate

was accordingly established from Chattanooga on February 16, 1924. Respondents state that this rate situation brought forth vigorous protests from shippers of glass bottles located on the Ohio River and at St. Louis rate points, who had to pay rates 5.5 cents higher; and that they seek to satisfy this complaint and at the same time restore the Chattanooga rate to its original and proper basis by publication of the proposed rate. They contend that the rates from Oklahoma points to Memphis are too low, and it was testified that the southwestern lines intended to increase them to 52.5 cents, effective about November 25, 1924. This rate is on the basis prescribed by us on glass bottles for joint-line application between points in the Southwest in *Memphis-Southwestern Investigation*, 77 I. C. C. 473, for distances of 320 miles and over 300 miles, plus 2 cents for Memphis bridge toll. The single-line basis is 2 cents lower. The proposed rate is 10 cents under, or 80 per cent of this joint-line scale.

Respondents point out that the rates prescribed by us in *I. and S. 1303* from St. Louis and the Ohio River crossings to Valley territory were not fixed as reasonable maximum rates, *Standard Sanitary Mfg. Co. v. S. Ry. Co.*, 80 I. C. C. 7, *Jackson Paper Co. v. A. & V. Ry. Co.*, 87 I. C. C. 529, *Knoxville Traffic Bureau v. S. Ry. Co.*, 89 I. C. C. 708, and insist that the rates in effect on glass bottles from St. Louis and Evansville to Memphis, published in line with rates prescribed in that case and which they now propose to establish from Chattanooga, are much below what they properly would be except for competitive conditions. They call attention to the fact that the rate in the opposite direction, Memphis to Chattanooga, is 53.5 cents, and that the same rate applies from both Evansville and Cincinnati to Chattanooga for hauls of 309 and 338 miles, respectively; that from Cincinnati to Memphis, 487 miles, the rate is 45 cents; and that the 40.5-cent rate also applies from Alton, Ill., to Memphis, 333 miles. Glass bottles are manufactured at Cincinnati, Evansville, and Alton, and are shipped from those points to Memphis.

Respondents assert that there is no reason to accord Chattanooga a better rate than that maintained from St. Louis; that if it were not for competition at Memphis the rate from Chattanooga would be no less than the rates from Memphis, Evansville, or Cincinnati to Chattanooga, or those applicable generally in southeastern territory, and that the proposed increase is merely an attempt to put Chattanooga back where it belongs. They intend to disregard any competition from Oklahoma producers, regardless of whether or not the rates of the latter are increased, and are unwilling to go farther than to meet the St. Louis and Evansville rates. To continue the present rate from Chattanooga will, they urge, still further complicate the Valley situation by forcing reductions in the already depressed rates from

St. Louis and the Ohio River crossings to Memphis; and to reduce the latter rates doubtless would necessitate corresponding reductions at the lower Valley points, and bring about a greater disparity between the Valley rates and those in the Southeast.

Respondents maintain that the proposed rate is strictly in line with the rates in effect from Chattanooga to other points within the Valley; that it is, in fact, a part of the Valley adjustment, which was temporarily held up because of the Oklahoma situation. They show, for instance, that the rate to Meridian, Columbus, Holly Springs, Tupelo, and West Point, Miss., points 257 to 296 miles distant, is 40.5 cents; that to Jackson, Miss., 392 miles, the rate is 45 cents. To points in the Southeast it is shown that the rates from Chattanooga are on a much higher level. For example, a rate of 44 cents applies to Augusta, Ga., 309 miles, Athens, Ga., 211 miles, and Columbus, Ga., 241 miles. To Americus, Ga., 295 miles, Albany, Ga., 325 miles, and Hawkinsville, Ga., 274 miles, the rates are 47 cents. To Birmingham, Ala., only 143 miles distant, the rate is 31 cents.

Respondents further point out that our scale in *Memphis-Southwestern Investigation, supra*, provides for joint-line rates ranging from 56 to 59.5 cents for the distances from the Oklahoma points mentioned to Memphis. They further show that the present rates from St. Louis and Kansas City, Mo., to points in Oklahoma and Arkansas are on a higher level. For example, it is shown that the rate from St. Louis to Tulsa, Okla., 425 miles, is 74 cents; to Newport, Ark., 265 miles, 45 cents; and to Higginson, Ark., 303 miles, 48.5 cents. From Kansas City to Tulsa and Okmulgee, 262 and 307 miles, respectively, the rate is 76 cents. From Kansas City to Bentonville, Ark., 270 miles, the rate is 45 cents, and to Fort Smith, Ark., 327 miles, it is 50 cents. Further comparison is made with rates in effect from points in central territory from which there is actual movement to Memphis, such as 47.5 cents from Terre Haute and Indianapolis, Ind., for hauls of 385 and 446 miles, respectively; 50.5 cents from Muncie, Ind., 500 miles; and 53 cents from Washington, Pa., 777 miles.

Protestant directed its evidence mainly to a comparison of the Chattanooga rates with those in effect from Nashville, Tenn., Louisville, Ky., and the Oklahoma points. It points out that respondents maintain rates of 32.5 cents from Nashville to Memphis, for a haul of 230 miles, and 40.5 cents from Louisville, for 377 miles; and urges that if Nashville is entitled to a rate 8 cents under the Louisville rate for a difference in haul of 147 miles, Chattanooga, from which the haul is 83 miles greater than from Nashville, is entitled to a rate somewhat lower than the Louisville rate. It contends that the differential of 5.5 cents in present rates, Chattanooga

under Louisville, considering the difference in the haul, is fair; and that it is in line with the basis prescribed by us in *Standard Sanitary Mfg. Co. v. S. Ry. Co.*, *supra*. In that case we found the rates on enameled-iron plumbers' materials from Louisville to Memphis to be unduly prejudicial to the extent that they exceeded the rates contemporaneously in effect on like traffic from Chattanooga to Memphis by more than 3.5 cents. Plumbers' materials were manufactured at, and moved from, both Louisville and Chattanooga. Glass bottles are not manufactured at either Louisville or Nashville, and therefore the rates from those points are used only as proportional or reshipping rates. Moreover, Louisville has been accorded the depressed St. Louis basis.

Protestant asserts that the present rate of 35 cents enables the Chattanooga manufacturer to meet the competition of manufacturers west of the Mississippi who not only enjoy this rate but are favored with lower manufacturing costs by reason of the proximity of natural gas, an important factor in the manufacture of glass bottles. It shows that at the minimum weight of 30,000 pounds the earnings under the proposed rate would be \$121.50 per car, and 38.8 cents per car-mile, an increase of \$16.50 per car and 5.3 cents per car-mile over the earnings under the present rate, and an increase of \$36 per car, or 11.5 cents per car-mile, over those under the rate in effect prior to February 16, 1924. It compares rates to Memphis from points in central territory, such as Huntington, W. Va., 605 miles, 47.5 cents, and Toledo, Ohio, 689 miles, 53 cents. It also compares rates from Arkansas and Oklahoma points to Memphis, and from Oklahoma to Kansas City, St. Louis, and other points, which are on a basis the same as or lower than the present rates from Chattanooga.

We find that the proposed schedules have been justified. An order vacating the order of suspension and discontinuing this proceeding will be entered.

No. 15195

JACKSON TRAFFIC BUREAU, FOR CASE-TEEL COMPANY, *v.* ALABAMA & VICKSBURG RAILWAY COMPANY ET AL.

Submitted May 7, 1924. Decided October 31, 1924

Rates on rice bran from Wheatley, Ark., to Jackson and Meridian, Miss., found unreasonable and in violation of the fourth section. Reasonable rate prescribed for the future, and reparation awarded.

T. P. Goodwin for complainant.

E. C. Craig for defendants.

REPORT OF THE COMMISSION

DIVISION 3, COMMISSIONERS HALL, CAMPBELL, AND COX

BY DIVISION 3:

Exceptions were filed by defendants to the report proposed by the examiner.

The Jackson Traffic Bureau, Jackson, Miss., in behalf of Case-Teel Company, herein called complainant, a corporation dealing in mixed stock feed at Jackson, by complaint filed August 25, 1923, alleges that the rates charged on two shipments of rice bran, in carloads, from Wheatley, Ark., to Jackson and Meridian, Miss., made January 26 and February 14, 1923, respectively, were unjust, unreasonable, unduly discriminatory against rice bran to the undue preference of grain and grain products in violation of sections 2 and 3, and in violation of the long-and-short-haul clause of section 4 of the act. We are asked to prescribe a rate of 27.5 cents for the future, and to award reparation. Rates will be stated in cents per 100 pounds.

The shipment to Meridian weighed 50,301 pounds; that to Jackson, 50,145 pounds. The route of movement was over the Chicago, Rock Island & Pacific to Memphis, Tenn., 64.4 miles; thence over the Illinois Central to Jackson, 211 miles; and over the Alabama & Vicksburg from Jackson to Meridian, 95.8 miles.

Rice bran is used in the manufacture of mixed stock feed which is sold by complainant and shipped to points in the South. The value of these shipments was approximately \$19 per ton. Complainant's competitors are located principally at Memphis, Meridian,

New Orleans, La., Cairo, Ill., and St. Louis and other points in Missouri.

The rate charged on the shipment to Jackson was 41 cents, composed of the commodity rate of 15.5 cents to Memphis and the class D rate of 25.5 cents beyond. The rate charged on the shipment to Meridian was 34.5 cents, composed of 15.5 cents to Memphis and a commodity rate of 19 cents beyond. Subsequent to the movement of the Jackson shipment a commodity rate of 19 cents was established from Memphis to Jackson, which is the same as the rate from New Orleans to Jackson, thus making the present combination rate from Wheatley to Jackson, 34.5 cents. Joint class rates of 78 cents were applicable on both shipments. There are therefore outstanding undercharges, of which defendants request permission to waive collection, as they do not attempt to justify any basis of rates higher than the Memphis combinations.

Complainant refers to rates on rice bran from Wheatley of 23 cents to East St. Louis and 20.5 cents to Cairo, Ill. The following rates and distances from Wheatley to points in Louisiana as compared with the rates charged to Jackson and Meridian are taken from the record:

From Wheatley, Ark., to—	Miles	Cents
Jackson, Miss.-----	275.4	41
Meridian, Miss.-----	371.2	34.5
Shreveport, La.-----	259	27.5
Baton Rouge, La.-----	413	27.5
Alexandria, La.-----	309	27.5
Winfield, La.-----	263	27.5
Tallulah, La.-----	243	27.5
Monroe, La.-----	219	27.5
New Orleans, La.-----	604.8	27.5

Defendant refers to rates to Jackson of 37.5 cents from Crowley and Lake Charles, La., distances of 265 and 316 miles respectively; a rate of 44.5 cents from Beaumont, Tex., 375 miles; rates of 39 cents from Wheatley to Florence, Ala., 221 miles, and to Decatur, Ala., 256 miles, and rates from Arkansas and Louisiana points to many other points in Alabama and Mississippi on approximately the same basis.

There was a contemporaneous proportional commodity rate of 14 cents from Memphis to Jackson on bean flour, bran, beet pulp, chaff, rice flour, hulls, and brewer's refuse.

It will be noted that the combination rate applied from Wheatley to Jackson was 13.5 cents higher than the joint rate to New Orleans, a more distant point on the same route in the same direction, in violation of section 4 of the interstate commerce act. The rate to the more distant point also applies through Meridian.

Defendants' traffic witness testified that, although they did not regard the combination rates applied as unreasonable, the carriers, on account of representations made by complainant, were contemplating the publication of the 27.5-cent rate sought.

We find that the rates assailed were, are, and for the future will be, unreasonable, and in violation of the long-and-short-haul clause of the fourth section of the interstate commerce act, to the extent that they exceeded, exceed, or may exceed 27.5 cents per 100 pounds; that complainant made the shipments as described and paid and bore the charges thereon; and that it has been damaged thereby in the amount of the difference between the charges paid and those which would have accrued on the basis herein found reasonable; and that it is entitled to reparation on the shipment to Jackson in the sum of \$67.69, with interest, and on the shipment to Meridian in the sum of \$35.21, with interest. Collection of the outstanding undercharges may be waived.

There is no evidence of the character required to prove damage under sections 2, 3, and 4. An order requiring the maintenance of a rate of 27.5 cents for the future will be entered, and the establishment of that rate will remove any violations of sections 2, 3, or 4 which may exist.

No. 9966¹

HUDSON MULE COMPANY ET AL. v. LOUISVILLE & NASHVILLE RAILROAD COMPANY, DIRECTOR GENERAL, AS AGENT, ET AL.

Submitted December 14, 1923. Decided November 3, 1924

On further hearing reparation awarded on additional shipments of horses and mules, in carloads, from and to numerous points in various States during the period from May 9, 1919, to May 15, 1923, inclusive. Previous reports, 63 I. C. C. 6; 74 I. C. C. 419.

J. D. Patterson, jr., and Watkins, Russell & Asbill for complainants and interveners.

Alex M. Bull for Director General of Railroads, as agent, Western & Atlantic Railroad Company, Nashville, Chattanooga & St. Louis Railway, and Louisville & Nashville Railroad Company.

REPORT OF THE COMMISSION ON FURTHER HEARING

ESCH, Commissioner:

No exceptions were filed to the report proposed by the examiner on further hearing.

In our original report in these cases, 63 I. C. C. 6, decided July 12, 1921, we found that the rates assailed on horses and mules, in carloads, from numerous points in various States to Atlanta, Ga., and certain other points were unreasonable to the extent that they respectively exceeded the aggregate of intermediate rates subject to the act. Complainants were found entitled to reparation upon compliance with Rule V of the Rules of Practice. These findings were affirmed in *Live Stock to, from and between Points in South-east*, 74 I. C. C. 419, decided December 5, 1922, wherein we said that they clearly referred to the aggregates of intermediate rates contemporaneously in effect. No evidence, however, was introduced at the hearing immediately preceding that decision regarding shipments made since the previous hearing in 1919. Upon petition of complainants, on June 18, 1923, we reopened these cases for further hearing solely on the question of whether complainants paid and

¹ This report also embraces No. 9967, *Same v. Louisville & Nashville Railroad Company, Director General, as Agent, et al.*, and No. 10090, *Hudson Mule Company et al. v. Director General, as Agent, Nashville, Chattanooga & St. Louis Railway, et al.*

bore the charges on shipments moving subsequent to May 8, 1919. In the decision last cited we authorized the establishment of rates for the future based on distance scales which had been agreed upon by the parties as a compromise. Schedules of rates purporting to be in accordance therewith became effective May 16, 1923. The evidence at this hearing was therefore confined to shipments moving subsequent to May 8, 1919, and previous to May 16, 1923.

The following parties appeared at the further hearing and introduced satisfactory evidence that each, during the period from May 9, 1919, to May 15, 1923, inclusive, made shipments as described in the respective complaints and paid and bore the freight charges thereon: Hudson Mule Company, a corporation; Gus Coggins and T. Roll Coggins, copartners under the firm name of Coggins Brothers; S. Weill and J. A. Weill, copartners under the firm name of Weill Brothers; and F. S. Hall, complainants in Nos. 9966, 9967, and 10090; A. J. Wilson, Gus Coggins, and T. Roll Coggins, copartners under the firm name of Coggins & Wilson; and A. J. Wilson, complainants in Nos. 9966 and 9967; I. N. Ragsdale, C. R. Lawhon, and C. N. Ragsdale, copartners under the firm name of Ragsdale & Lawhon Mule & Horse Company, complainants in No. 10090 and interveners in Nos. 9966 and 9967; G. N. Nash and D. L. Jaillette, copartners under the firm name of Nash & Jaillette; and H. J. Mayes and T. H. Jones, copartners under the firm name of Mayes & Jones, interveners in Nos. 9966, 9967, and 10090; and C. G. Turner and J. H. Turner, copartners under the firm name of Turner Brothers, interveners in Nos. 9966 and 9967. Nash & Jaillette ceased to do business as a copartnership, other than the closing up of their copartnership affairs, sometime in May or June, 1921. No shipments were made by Nash & Jaillette after their agreement for dissolution. E. H. Cowley and O. G. Clark, copartners under the firm name of Cowley & Clark, appeared and offered evidence, but they are not parties to either of the cases in which this further hearing was had.

We find that the rates assailed during the period from May 9, 1919, to May 15, 1923, inclusive, were unreasonable to the extent that they exceeded the respective aggregates of lowest intermediate rates subject to the act contemporaneously in effect over the routes of movement; that the parties named in the last preceding paragraph hereof, except Cowley & Clark, made shipments during that period from and to the points described in the respective complaints and paid and bore the charges thereon; that they have been damaged thereby in the amount that the charges paid exceeded those which would have accrued on the basis of the respective aggregates of lowest intermediate rates subject to the act contemporaneously in effect

over the routes of movement; and that they are entitled to reparation, with interest, on all shipments made by them during said period from and to the points described in the respective complaints to which they are parties.

The exact amount of reparation to which each complainant or intervenor is entitled can not be determined on the record, and they should therefore comply with Rule V of the Rules of Practice.

HALL, *Chairman*, dissenting:

For reasons clearly set forth in the dissent to the original report in these cases I am unable to concur in the finding of unreasonableness and awards of reparation here made.

I am authorized to say that COMMISSIONERS POTTER, LEWIS, and Cox concur in this dissent.

93 I. C. C.

No. 15581¹GENTILE BROTHERS COMPANY *v.* CENTRAL OF
GEORGIA RAILWAY COMPANY ET AL.

Submitted September 11, 1924. Decided October 31, 1924

1. Rate on peaches, in carloads, from Fort Valley, Ga., to Watuppa, Mass., found not unreasonable, unjustly discriminatory, or unduly prejudicial. Complaint dismissed.
2. Fourth-section relief denied.

P. P. Forrester for complainant.*Richard B. Gwathmey* for defendants.

REPORT OF THE COMMISSION

DIVISION 3, COMMISSIONERS HALL, CAMPBELL, AND COX

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant is a corporation distributing fruits, with offices at Cincinnati, Ohio. By complaint filed January 24, 1924, as amended, it alleges that the rate charged on one carload of peaches shipped May 31, 1922, from Fort Valley, Ga., to Watuppa, Mass., was unreasonable, unjustly discriminatory, unduly prejudicial, and in violation of the long-and-short-haul clause of the fourth section. Reparation is sought. Rates will be stated in cents per 100 pounds.

The shipment moved over the Central of Georgia; the Atlantic Coast Line; the Richmond, Fredericksburg & Potomac; the Pennsylvania; and the New York, New Haven & Hartford, 1,220 miles. Charges were collected at the applicable commodity rate of \$1.58. On June 3, 1922, three days after the shipment moved, a rate of \$1.355 became effective. A rate of \$1.47 was in effect at the time of movement from Eufaula, Ala., a point to which Fort Valley is directly intermediate over the route of movement.

Complainant contends that the rate assailed was unreasonable to the extent that it exceeded the rate subsequently established, and further relies on the existence of the fourth-section departure and the fact that the tariff carried on its title-page a note containing reference to rule 77 of Tariff Circular 18-A. The application of this note was limited to rates bearing reference thereto. The rate

¹ This report also embraces Portions of Fourth Section Application No. 1530.

assailed carried a reference to this note which provided in effect that the rate from Fort Valley to Boston, Mass., would be established at intermediate destinations between New York, N. Y., and Boston, but did not provide for the establishment of the Eufaula rate from Fort Valley to Boston. Watuppa takes the Boston basis, and references herein to the Boston rates will be understood to apply also to Watuppa. The maintenance of a higher rate from Fort Valley than from Eufaula was protected by an appropriate application which was assigned for hearing with this case. The existence of this fourth-section departure is not in itself proof that the rate from Fort Valley was unreasonable.

Defendants review several cases in which we have considered rates on peaches from Georgia points to northern markets. In *Georgia Peach Growers' Asso. v. A. C. L. R. R. Co.*, 10 I. C. C. 255, attack was made upon the rates to New York and other points. We found that neither the minimum weight nor the transportation charges from Georgia points to New York, based on the rate of 81 cents from Atlanta, Ga., were unreasonable, but prescribed a charge of \$50 per car, in lieu of the then existing charge of \$80, from New York to Boston. In *Waxelbaum & Co. v. A. C. L. R. R. Co.*, 12 I. C. C. 178, we prescribed a rate of 76 cents from Macon and Atlanta to Philadelphia, Pa., and New York. In compliance with that order the carriers reduced not only the rate from Macon and Atlanta, but established the same rate from various other basing points, including Eufaula, from which the rates at that time were the same as those from Macon and Atlanta, and also revised the rates from Fort Valley and other points to the basis of the lowest combination, which resulted in the rate from Fort Valley to New York being reduced from 87 to 83 cents. In *Georgia Fruit Exchange v. S. Ry. Co.*, 20 I. C. C. 623, we declined to condemn the carload minimum on peaches of 22,500 pounds for 40-foot cars.

Following a conference held in February, 1921, between representatives of the peach shippers and the carriers the minimum on 40-foot cars was reduced to 20,000 pounds, but the carriers declined to reduce the rates as requested by the shippers. In March, 1922, a further conference was had at which the shippers urged that the rates from Georgia points to New England and interior eastern points be reduced to the Rochester, N. Y., basis, in order that the Georgia growers might compete with growers in Texas, Arkansas, Oklahoma, and Missouri. With this request the carriers complied. This resulted in the reduction in the rate from Fort Valley to Boston from \$1.58 to \$1.355. Defendants state that the rate of \$1.245 from Fort Valley to New York, on which the Fort Valley-Boston rate of \$1.355 is constructed, is the rate of 83 cents established in

1907 following the *Waxelbaum case, supra*, as subsequently changed by the general increases and the general reduction, subject to the reduction in the minimum weight on 40-foot cars; and that the rate of \$1.355 from Fort Valley to Boston is but \$22 per car higher than the rate to New York, as compared with the charge of \$50 per car prescribed by us in 1904 in the *Georgia Peach Growers' case, supra*. It seems unnecessary to devote a detailed discussion to other evidence introduced by defendants, dealing with the earnings under the rate assailed and under compared rates; comparative loaded and empty car-miles; the alleged hazardous character and high cost of handling peach traffic; and the present alleged low estimated weight per crate. Defendants state that although an estimated weight of 42 pounds per crate is used in assessing charges, the actual weight averages approximately 50 pounds.

The reduction in the rate from Fort Valley to Watuppa on June 3, 1922, was part of a voluntary general reduction in the rates from Georgia to New England points, made at the request of the shippers in order to enable them to meet adverse marketing conditions. Under the circumstances it can not be regarded as implying any admission on the part of defendants that the prior rate was unreasonable. There is no evidence of unjust discrimination or undue prejudice.

We find that the rate assailed was not unreasonable, unjustly discriminatory, or unduly prejudicial. The complaint will be dismissed.

There were assigned for hearing with this case portions of fourth-section application No. 1530, by which defendant Central of Georgia and other carriers seek authority to continue to charge lower rates for the transportation of peaches from Eufaula to Boston and points taking the same rates, including Watuppa, than are contemporaneously maintained from Fort Valley and other intermediate points. The present rates to Watuppa are \$1.245 from Eufaula and \$1.355 from Fort Valley. There is no production of peaches at points on this defendant's line west of Cuthbert, Ga., including Eufaula. The present situation reflects the old system of making rates from certain basing points, including Eufaula, and of establishing rates from intermediate points on the lowest combination. Defendants explain that before the next shipping season it is their intention to establish rates from the South in conformity with the provisions of the fourth section, which will reflect the present charges per car from Fort Valley, based on an increased estimated weight of 50 pounds per crate. This would result in increases in some instances and reductions in others. For this reason defendants do not seek fourth-section relief for the

future, but they ask that a denial order be not entered until the revised adjustment outlined above can be worked out, especially as the present departures exist on paper only. As the fourth-section departures have not been justified, the application will be disposed of by an order of denial. If defendants find that the general revision of rates upon which they are engaged can not be completed by the date on which the order is to become effective, application may be made for postponement thereof.

No. 14570

HUMBLE OIL & REFINING COMPANY v. NEW YORK
CENTRAL RAILROAD COMPANY ET AL.

Submitted June 2, 1924. Decided October 31, 1924

Two carloads of steel plates shipped from Alliance, Ohio, to Baytown, Tex., reconsigned from Ranger, Tex., found to have been overcharged and mis-routed. Reparation awarded.

J. R. Davis and F. L. Gordon for complainant.

Frank Andrews, George Thompson, James M. Chaney, J. I. Houston, and H. H. Larimore for defendants.

REPORT OF THE COMMISSION

DIVISION 3, COMMISSIONERS HALL, CAMPBELL, AND COX

BY DIVISION 3:

Exceptions were filed by complainant to the report proposed by the examiner.

Complainant, a corporation, refines crude petroleum at Houston, Tex. By complaint filed December 30, 1922, it alleges that the charges collected on two carloads of steel plates shipped January 29, 1921, from Alliance, Ohio, originally consigned to Ranger, Tex., and reconsigned to Baytown, Tex., were unreasonable as a result of the failure of the Missouri Pacific to act promptly upon complainant's request to divert the cars while in transit, and by reason of the tariff rule of the Texas & Pacific respecting charges to apply on shipments diverted or reconsigned. Reparation and a reasonable reconsignment or diversion rule for the future are asked. Rates will be stated in amounts per 100 pounds.

The shipments were consigned on January 29, 1921, from Alliance to complainant at Ranger over the New York Central to Cleveland, Ohio; Cleveland, Cincinnati, Chicago & St. Louis to St. Louis, Mo.; Missouri Pacific, hereinafter called defendant, to Texarkana, Tex.-Ark.; and Texas & Pacific beyond. On February 7, 1921, complainant telephoned the general agent of defendant at Houston and requested diversion of the cars to Baytown, Tex., via Shreveport, La., care Southern Pacific lines. Confirmation in writing of complainant's request, dated February 6, was received by the general agent at Houston on the morning of February 9, together with the bills of lading covering the shipments. Defendant failed to effect the diversion or to transmit the request to its connection, and the cars moved to Ranger as originally routed.

Upon learning through its representative at Ranger of the arrival of the cars at that point, complainant telegraphed the Texas & Pacific to reconsign them to Baytown. This was accomplished before placement for unloading at Ranger. The cars moved from Ranger, as routed by complainant, back over the Texas & Pacific to Fort Worth; International & Great Northern to Houston; Beaumont, Sour Lake & Western to Fullerton, Tex.; Trinity Valley & Northern to Dayton, Tex.; and Dayton-Goose Creek to Baytown.

The shipments weighed 157,620 pounds and charges were collected in the sum of \$2,385.06, at a rate of \$1.51, plus a reconsignment charge of \$2.50 per car. The \$1.51 rate was made up of \$1,245 to Ranger, 13 cents back haul to Fort Worth, and a local rate of 13.5 cents from Dayton to Baytown.

This case presents three distinct contentions, viz, (1) that the shipments were overcharged, (2) that the Missouri Pacific was negligent in failing to divert the shipments as requested or to transmit the request to its connection, and (3) that the reconsignment rule of the Texas & Pacific was and is unreasonable. They will be considered in the order mentioned.

The applicable reconsignment tariff of the Texas & Pacific provided:

These rules and charges will apply whether shipments are handled on local rates, joint rates, or combination of intermediate rates, except as otherwise provided in this Item and in Items Nos. 95 to 101, inclusive, or reissues, the through rate to be applied under these rules is the rate on file with I. C. C. from point of origin applicable via these lines, to final destination, in effect on date of shipment from point of origin (except that when rate from point of origin to reconsigning or diversion point is higher than rate from point of origin to final destination such higher rate will apply), plus charges shown in Items Nos. 95 to 101, inclusive, * * * for back-haul or indirect service, if any, * * *.

The rate of \$1.245 to Ranger was also applicable to Baytown and under the above-quoted tariff provision charges on the shipments should have been based on the latter rate, plus the back-haul charge of 13 cents, plus the reconsignment charge of \$2.50 per car. The shipments were therefore overcharged \$212.78.

If diversion had been effected at Texarkana as requested a rate of \$1.02 would have been applicable. Reparation to that basis is sought. Complainant contends that if defendant had acted with due diligence the shipments could have been diverted at Texarkana. It further contends that, if defendant had transmitted the instructions to the Texas & Pacific with reasonable dispatch, diversion could have been effected after delivery to the Texas & Pacific and before arrival at Fort Worth, in which event as above indicated the applicable rate would have been \$1.245.

The position of defendant is that it did not have authority and was not obliged to make the diversion until bills of lading and written confirmation were in its possession, and that under exception A to its tariff rules it was not required to notify its connection, as the cars had passed out of its possession before receipt of the bills of lading and written confirmation.

The applicable reconsignment tariff of defendant provided that upon receipt of request for diversion or reconsignment of freight, in carloads:

* * * these lines will make diligent effort to locate the shipment and effect diversion or reconsignment, but will not be responsible for failure to effect the diversion or reconsignment desired unless such failure is due to the negligence of their employees.

It also provided, under the heading "Conditions," that "On 'Straight' consignments the original bill of lading should be surrendered or other proof of ownership established," and "Request for diversion or reconsignment must be made or confirmed in writing." Under "Rules and Charges," it was provided that—

When diversion or reconsignment is requested after shipment has passed out of possession of these lines, or when request is received too late for these lines to effect the change desired, such request will be transmitted to direct connecting carrier to which shipment was delivered, when the responsibility of these lines will end, and the shipment will be subject to rules of the carrier on whose rails the diversion or reconsignment is accomplished, except as per Section (a) of this Rule.

Section (a) provided that—

The rules published herein, governing the diversion or reconsignment of freight, are applicable while the freight is in possession of these lines; also when it has reached billed destination on these lines and has been diverted to switching road for placement.

Complainant's telephonic request was made at 9.15 a. m., February 7. Before noon of that day the general agent at Houston transmitted it by telegraph to defendant's freight-claim agent at St. Louis, Mo., through whose office requests for diversion are customarily handled. Defendant's lines do not reach Houston and the service of the International & Great Northern and the Texas & Pacific was used in transmitting the message as far as Texarkana. On the same date the request was in turn transmitted by the office of the freight-claim agent by joint telegram to defendant's agents at Dupo, Ill., and Hoxie, North Little Rock, and Texarkana, Ark., junction points on its line beyond St. Louis. The record does not show at what time the telegrams were sent by the freight-claim agent, nor the time of their receipt by the agents at the junction points. On February 9 messages were received by the freight-claim agent from the agents at Hoxie and Dupo reporting that the cars had passed on the 6th. On February 9, the freight-claim agent again telegraphed the agents at North Little Rock and Texarkana, and the general agent at Houston on the same date, after having been advised that the cars had left Dupo and Hoxie, also wired the agent at Texarkana direct. That night the general agent at Houston received a message from the agent at Texarkana stating that the cars had passed on the 7th and on the following morning advised complainant that the order to divert had been received too late.

The cars arrived at Texarkana on February 7 and were delivered to the Texas & Pacific at 3 p. m. the same day. They left Texarkana at 6.30 o'clock that evening; arrived at Fort Worth at 9.10 p. m. February 8; left that point at 6.45 p. m. February 9; and arrived at Ranger on the morning of February 10.

A period of 5 hours and 45 minutes elapsed between the receipt by the general agent at Houston of complainant's request for diversion of the cars and their delivery to the Texas & Pacific at Texarkana, and 2 days, 9 hours, 15 minutes between such receipt and the departure of the shipments from Fort Worth.

Defendant maintains that the general agent at Houston had no authority to send the telegram based on the telephonic request to divert and denies any neglect on its part in failing to effect the diversion. It points out the difficulties encountered because of the necessity of using a three-line service in transmitting messages from Houston and because of the extent of its system. It contends that it fulfilled its obligations when it notified complainant that the cars had passed out of its possession, and that it was complainant's duty to notify the Texas & Pacific.

The wording of defendant's tariff that requests for diversion or reconsignment must be made or confirmed in writing was a holding out to shippers that such requests in a form other than in writing would be accepted. Complainant complied literally with the tariff requirements by the subsequent confirmation in writing and the surrender of the bills of lading. Defendant's agent accepted the telephonic instruction to divert and proceeded in the manner customarily followed upon receipt of diversion requests, and the record does not show that the delay on the part of complainant in confirming the telephonic request in any way contributed to the failure of defendant either to divert the shipments or to transmit the request to its connection.

In *Central Foundry Co. v. S. Ry. Co.*, 42 I. C. C. 333, we found that the Southern was negligent in failing to transmit promptly to its connection complainant's request to divert a carload of cast-iron pipe and fittings which had been released to such connection 1 hour 25 minutes before receipt of the instruction by the agent of the Southern at the transfer point, and awarded reparation in the amount of drayage charges incurred as a result of failure to divert the shipment.

After the cars left Texarkana they could have been diverted at Paris, Sherman, or Fort Worth, junction points on the Texas & Pacific, without the necessity of a back haul if defendant's agent at Texarkana had promptly notified the freight-claim agent at St. Louis that the cars had passed that point, and if the latter had complied with his duty by immediately transmitting the instructions to the Texas & Pacific. A rate of \$1.245, plus the \$2.50 reconsignment charge, was applicable via each of those points, under the provision of the reconsignment tariff of the Texas & Pacific above quoted. The charges upon the latter basis, including reconsignment charges, would have been \$1,967.37, or \$204.90 less than those applicable over the route of movement.

Taking into account the distance from the terminus of defendant's line at which the request to divert was made and the difficulties attending the transmission of telegrams from Houston, it is not clear that defendant was negligent in failing to divert the cars at Texarkana; but it does appear that it was defendant's duty to take the necessary steps to effect the diversion at Fort Worth by its connection.

Complainant contends further that the reconsignment rule of the Texas & Pacific does not conform to the rule approved by the commission in the *Reconsignment Case*, 47 I. C. C. 590, in that the rule therein approved provides without limitation for the application of through rates via the reconsignment point from point of origin to final destination; and that the rule is unjust and unreasonable in

that it does not permit reconsignment at intermediate points on its line of interstate shipments moving over routes authorized by the tariffs at the through rate from point of origin to final destination.

The corresponding rule found reasonable in the *Reconsignment Case, supra*, was for general application. It does not follow that the provision of the rule here considered prescribing application of the rates to the reconsignment or diversion point, when higher than the rate from point of origin to final destination, is unreasonable.

We find that the shipments were overcharged to the extent that the charges exacted exceeded those which would have accrued on the basis of a rate of \$1.245 plus the rate of 13 cents for the back haul and the reconsignment charge of \$2.50 per car. We further find that the Missouri Pacific was negligent in failing to transmit promptly to its connection, the Texas & Pacific, in accordance with its tariff provision, complainant's request for diversion, and that the back haul from Ranger to Fort Worth became necessary as a result of that failure. We further find that the reconsignment rule of the Texas & Pacific was not and is not unjust or unreasonable. It is our further finding that complainant made the shipments as described and paid and bore the charges thereon; that it was damaged thereby in the amount of the difference between the charges applicable over the route of movement and those which would have accrued if the shipments had moved directly through Fort Worth, Tex., and that complainant is entitled to reparation from the defendants in the sum of \$212.78 with interest, and from defendant, Missouri Pacific Railroad Company, reparation in the sum of \$204.90 with interest.

An appropriate order will be entered.

93 I. C. C.

No. 15429

SOUTHWESTERN SHIPBUILDING COMPANY v. DIRECTOR GENERAL, AS AGENT, LOS ANGELES & SALT LAKE RAILROAD COMPANY, ET AL.

Submitted July 7, 1924. Decided October 31, 1924

Shipments of decomposed granite from Pacoima, Calif., to East San Pedro, Calif., found overcharged. Reparation awarded.

F. W. Turcotte and *B. H. Carmichael* for complainant.

M. G. de Quevedo for defendants.

REPORT OF THE COMMISSION

DIVISION 3, COMMISSIONERS HALL, CAMPBELL, AND COX

BY DIVISION 3:

Exceptions were filed by the Director General of Railroads, as agent, to the report proposed by the examiner.

Complainant, a corporation, was engaged during the period under consideration in the fabrication of iron and steel and in shipbuilding at East San Pedro, Calif. It alleges in its complaint, seasonably filed, that the rate charged on numerous carloads of decomposed granite shipped between August 15 and October 9, 1918, inclusive, from Pacoima, Calif., to East San Pedro, was unlawful, unjust, and unreasonable in violation of sections 1 and 6 of the interstate commerce act. Reparation only is sought. Rates will be stated in amounts per ton of 2,000 pounds.

At the hearing the Director General of Railroads, as agent, hereinafter called defendant, objected to the allegation of unreasonableness upon the ground that, not having originally been included in the informal complaint, it was barred by the statute of limitations at the time the formal complaint was filed. Complainant in effect stated that it would abandon that allegation and submitted no evidence in support thereof. With respect to a further objection that the formal complaint listed 44 shipments whereas only 43 were listed in the informal statement, complainant stated that freight bills covering the 44 shipments were filed with the informal complaint and that the total overcharge claims sought therein embraced all of the 44 shipments.

The disintegrated, or decomposed, granite was purchased by complainant, f. o. b. Pacoima. It moved over the Southern Pacific

to Los Angeles, and the Los Angeles & Salt Lake beyond. The combination commodity rate of \$1.30 assessed was composed of a rate of 60 cents to Los Angeles and a rate of 70 cents beyond. Both of these factors had been increased 1 cent per 100 pounds effective June 25, 1918.

Complainant contends that a rate of \$1.10 was applicable, constructed by adding to the June 24, 1918, rates of 35 cents to Los Angeles, and 54 cents beyond, a single increase of 1 cent per 100 pounds. A combination rule authorizing this method of determining the increased rate on specified commodities was published August 14, 1918, by the Los Angeles & Salt Lake, but a similar rule was not made effective in the tariff of the Southern Pacific until October 10, 1918, one day after the completion of the movement under consideration. Complainant relies upon the decisions in *Sligo Iron Store Co. v. W. M. Ry. Co.*, 62 I. C. C. 643, 73 I. C. C. 551, and subsequent cases, in which we found that where one of the tariffs used in making combination rates on through shipments contains a rule that such rates will be subject to a single increase, there is a holding out to the shipper of the rate so constructed which the carrier publishing the rule must protect.

Defendant denies that the combination rule in the Los Angeles & Salt Lake's tariff could be applied to shipments originating on the line of the Southern Pacific. This denial is apparently based upon the fact that the combination rule mentioned provides only for its application to certain specified commodities, among which was named "stone, broken, crushed, or ground"; that such rates were named in the tariff of the Los Angeles & Salt Lake and expressly included decomposed or disintegrated granite; but that the Southern Pacific tariff at that time did not specifically name rates on stone and, accordingly, the rule could not be applied to the rates provided therein for disintegrated granite. The increase authorized by General Order No. 28 for stone was applied by the Southern Pacific to the rates on disintegrated granite and, after the combination rule was published on October 10, 1918, in the Southern Pacific tariff, it was apparently applied by that road on shipments of disintegrated granite. Defendant also criticizes complainant's evidence of the paying and bearing of the freight charges on the shipments under consideration but submitted no evidence in rebuttal.

We find that the rate of \$1.10 per ton was applicable on complainant's shipments. We further find that the shipments were overcharged; that complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged thereby in the amount of the difference between the charges paid and those

which would have accrued at the rate herein found applicable; and that it is entitled to reparation, with interest. Complainant should comply with Rule V of the Rules of Practice.

No. 13984

JACKSON TRAFFIC BUREAU v. AKRON, CANTON &
YOUNGSTOWN RAILWAY COMPANY ET AL.

PORTIONS OF FOURTH SECTION APPLICATION NO. 2061

Submitted June 13, 1924. Decided October 31, 1924

Certain commodity rates from central territory to Jackson, Miss., found not unreasonable, unjustly discriminatory, or unduly prejudicial. Complaint dismissed.

Thomas P. Goodwin for complainant.

A. P. Humburg, Joseph Hattendorf, Guernsey Orcutt, and L. C. Oliphant for defendants.

W. J. Tompkins and O. W. Hayward for interveners.

REPORT OF THE COMMISSION

DIVISION 3, COMMISSIONERS HALL, CAMPBELL, AND COX

BY DIVISION 3:

Exceptions were filed by complainant to the report proposed by the examiner.

Complainant, an unincorporated association of jobbers and merchants of Jackson, Miss., alleges that the class and commodity rates published in Agent Kelley's (now Agent Jones's) tariff I. C. C. No. 1201 from points in central territory to Jackson on traffic moving over the Illinois Central as the delivering line are unreasonable, unjustly discriminatory, unduly preferential, and in violation of the long-and-short-haul provision of the fourth section of the interstate commerce act. We are asked to prescribe lawful rates for the future. Rates will be stated in amounts per 100 pounds and are those in effect at the time of hearing October 23, 1922.

Those portions of fourth-section application No. 2061 filed by J. F. Tucker, agent, by which carriers named as parties thereto ask for authority to continue class and commodity rates from points

in central territory to New Orleans, La., which are lower than the rates contemporaneously maintained on like traffic to Jackson and other intermediate points were assigned for hearing in connection with this case.

The Colonial Salt Company intervened on behalf of complainant, and the Meridian Traffic Bureau and the Mississippi Freight Traffic Bureau intervened on behalf of shippers located at Meridian, Greenwood, Greenville, Yazoo City, Columbus, Corinth, Winona, Grenada, and Tupelo, Miss. These interveners request that whatever relief is afforded complainant be afforded also to them..

Jackson is in the south central part of Mississippi on the Illinois Central, Yazoo & Mississippi Valley, Alabama & Vicksburg, New Orleans Great Northern, and Gulf & Ship Island, 44 miles east of Vicksburg, Miss.

In view of the fact that the general adjustment of class rates is now under consideration in the *Southern Class Rate Investigation*, No. 13494, complainant after the hearing requested that a proposed report be issued dealing only with the carload commodity rates to Jackson, as compared with those in effect to Vicksburg, on the following commodities: Agricultural implements, bagging, dried beans, canned goods, salt, cereal-food preparations, fruits and vegetables, furniture, glass and glassware, window glass, plaster, roofing material, soap, soda, starch, automobiles, lamp chimneys and pottery insulators. This was done, and the present report will also be confined to those commodity rates.

The tariff under consideration names specific rates on most of the commodities to Vicksburg, but not to Jackson. The rates to the latter point are made by combination on some Ohio or Mississippi River crossing. The following table compiled from exhibits of record shows the rates on a number of the commodities from representative points of origin to Jackson and Vicksburg:

Commodity	From—	To Jackson	To Vicksburg
		<i>Cents</i>	<i>Cents</i>
Agricultural implements.....	Akron, Ohio.....	79.5	62
Canned goods.....	Circleville, Ohio.....	70.5	56
Cereal-food preparations.....	Battle Creek, Mich.....	68.5	50.5
Dried beans.....	Lansing, Mich.....	80	64
Glass and glassware.....	Sandusky, Ohio.....	79.5	65
Window glass.....	Pittsburgh, Pa.....	92	61
Pottery.....	East Liverpool, Ohio.....	78	56
Roofing material.....	Carey, Ohio.....	64.5	44
Soda and soda products.....	Buffalo, N. Y.....	81.5	42
Starch.....	Harbor Beach, Mich.....	83.5	57.5
Automobiles.....	Detroit, Mich.....	¹ \$245.50	¹ \$197.00

¹ Rate per car of 10,000 pounds.

Aside from the above comparison of rates there is no evidence to establish the allegation of unreasonableness. Some evidence was introduced tending to show that dealers at Jackson in some of the commodities listed are in competition with dealers at Vicksburg and that the spread in rates, Jackson over Vicksburg, results in disadvantage to dealers at Jackson, but the record does not warrant a finding of undue prejudice.

Defendants admit that the rates to the Mississippi Valley territory are in need of readjustment. They are, in fact, at present engaged in effecting such readjustment by establishing joint commodity rates somewhat lower than the existing combinations, but these revisions are necessarily dependent in a measure upon the level of class rates which will be fixed in the *Southern Class Rate Investigation*, No. 13494.

With reference to the fourth-section application assigned for hearing in connection with this complaint it appears that by supplemental fourth-section order No. 7836 dated May 21, 1924, relief heretofore granted to farther distant points taking lower rates has been extended until January 10, 1925, except as to rates on grain and grain products, canned goods, iron and steel articles, agricultural implements, farm wagons, and furniture, including refrigerators. As to these commodities fourth-section relief has been denied since July 1, 1923.

We find that the rates assailed are not unreasonable, unjustly discriminatory, or unduly prejudicial. This finding is without prejudice to any different conclusions which may be reached as to class rates in the *Southern Class Rate Investigation*, No. 13494.

The complaint will be dismissed.

93 I. C. C.

No. 15207

JACKSON TRAFFIC BUREAU, FOR CABBELL-IRBY COMPANY, *v.* BALTIMORE & OHIO RAILROAD COMPANY ET AL.

Submitted May 2, 1924. Decided October 31, 1924.

Rates on common pottery insulators, in barrels, in carloads, from East Liverpool, Ohio, to Jackson, Miss., found not unreasonable or otherwise unlawful. Complaint dismissed.

T. P. Goodwin for complainant.

J. L. Sheppard and *E. C. Craig* for Illinois Central Railroad Company.

REPORT OF THE COMMISSION

DIVISION 3, COMMISSIONERS HALL, CAMPBELL, AND COX

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

By complaint filed August 30, 1923, the Jackson Traffic Bureau of Jackson, Miss., acting in behalf of Cabbell-Irby Company, a corporation dealing wholesale in electrical supplies, alleges that the rates of \$1.25 and \$1.13, respectively, charged on two carloads of common pottery insulators shipped October 29, 1921, and December 23, 1922, from East Liverpool, Ohio, to Jackson, were unjust, unreasonable, unduly prejudicial and preferential, and unjustly discriminatory. The prayer is for reparation. Rates are stated in cents per 100 pounds.

The shipments consisted of porcelain knobs and tubes for carrying telephone and electric wires. They were packed in barrels. The knobs were worth \$25 per barrel of 460 pounds and the tubes \$7 per barrel of 360 pounds. The cost of one carload was \$2,364.13, less 5 per cent and the value of the other car was \$2,023.97, inclusive of freight charges. The shipments were charged the applicable fifth-class rates of \$1.25 on the first car and \$1.13 on the second. The rate on the latter shipment reflects the 10 per cent reduction of 1922. The distance from East Liverpool to Jackson is 1,066 miles.

Complainant asks reparation based on a rate of 68 cents on the first car and 61 cents on the second. It refers to the following rates from East Liverpool to Jackson: A commodity rate of 79 cents on canned fruits, canned meats, pickles, and table sauce with ton-mile

earnings of 10.8 mills; a rate of 68 cents on wire nails, iron, and steel, with ton-mile earnings of 12 mills; 78 cents on fruits and vegetables, earning 14 mills, 92 cents on window glass, earning 17.3 mills; and 78 cents on agricultural implements, earning 10.5 mills. Complainant compares these earnings with that of 23.5 mills per ton-mile on the shipments under consideration.

Complainant contends that insulators are comparable with wire nails, fruits and vegetables, and glassware. It compares the average ton-mile earnings of Class I roads, for the period 1911 to and including 1920, of 7.09 mills per ton-mile with the yield of 23.5 mills under the rates assailed.

In establishing reasonable rates the value of the commodity to be rated and its liability to damage incident to transportation must be considered. The rates and earnings on the commodities referred to by complainant are not comparable with those on insulators.

Defendants point out that insulators are almost invariably subject to fifth-class rates to all points in the country, the principal exception being a commodity rate to the Pacific coast. The following table shows the rates taken from exhibits of record on insulators from East Liverpool and Mansfield, Ohio, to typical southern points, together with the distances:

From—	To—	Distance	Rate
		<i>Miles</i>	
East Liverpool.....	Jackson, Miss.....	1,066	¹ \$1.13
Do.....	Atlanta, Ga.....	766	1.08
Do.....	Birmingham, Ala.....	772	1.02
Do.....	Anniston, Ala.....	772	1.08
Do.....	West Point, Ga.....	839	1.13
Do.....	Troy, Ala.....	921	1.17
Do.....	Meridian, Miss.....	925	1.13
Do.....	Brookhaven, Miss.....	1,019	1.155
Mansfield.....	Hattiesburg, Miss.....	930	1.12

¹ Rate assailed.

We find that the rates assailed were not and are not unreasonable, unduly prejudicial, or unjustly discriminatory. This finding is without prejudice to any different conclusions that may be reached in *Southern Class Rate Investigation*, No. 13494, now pending. The complaint will be dismissed.

No. 15250

LEVENE'S SONS *v.* DELAWARE, LACKAWANNA &
WESTERN RAILROAD COMPANY ET AL.

Submitted July 30, 1924. Decided October 31, 1924

Rate charged on scrap brass, in carloads, from Binghamton, N. Y., to Philadelphia, Pa., since April, 1923, found to have been unreasonable. Reparation awarded.

John A. Smith for complainant.

W. J. Larrabee and *D. T. Lawrence* for defendants.

REPORT OF THE COMMISSION

DIVISION 3, COMMISSIONERS HALL, CAMPBELL, AND COX

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainants are John and Jacob Levene, copartners, dealing in scrap and waste material under the firm name of Levene's Sons at Binghamton, N. Y. By complaint filed September 10, 1923, they allege that the rates on scrap brass, in carloads, from Binghamton to Philadelphia, Pa., since April, 1923, have been and are unreasonable and in violation of the fourth section. We are asked to award reparation and to prescribe a reasonable rate for the future. Rates will be stated in cents per 100 pounds.

The shipments moved over the Delaware, Lackawanna & Western, hereinafter called defendant, and the Pennsylvania at the applicable fifth-class rate of 28.5 cents. Contemporaneously there was in effect over the same route a commodity rate of 23 cents on scrap brass from Black Rock, Buffalo, and East Buffalo, N. Y., to Philadelphia. Binghamton is directly intermediate between Buffalo and Philadelphia over authorized routes. The tariff in which the rate of 23 cents was published contained a reference to rule 77 of Tariff Circular 18-A but no request was made by complainant for a lower commodity rate. The rate charged was in violation of the long-and-short-haul clause of the fourth section. No comparisons were introduced to show that the rate charged was unreasonable.

The publication subject to rule 77 of the 23-cent rate from points in New York farther distant from Philadelphia than is Bing-

hamton was tantamount to an admission by defendant that the higher rate from Binghamton, an intermediate point, was unreasonable. *Standard Asphalt & Refining Co. v. Director General*, 66 I. C. C. 611, and cases there cited.

A rate of 21 cents from Binghamton to Philadelphia was established effective May 20, 1924.

We find that the rate charged for the transportation of scrap brass, in carloads, from Binghamton, N. Y., to Philadelphia, Pa., since April, 1923, was unreasonable to the extent that it exceeded 23 cents per 100 pounds; that complainants made the shipments as described and paid and bore the charges thereon; that they have been damaged thereby in the amount of the difference between the charges paid and those which would have accrued at the rate herein found reasonable; and that they are entitled to reparation, with interest. Complainants should comply with Rule V of the Rules of Practice.

93 I. C. C.

No. 15416

KAW RIVER SAND & MATERIAL COMPANY *v.* DIRECTOR
GENERAL, AS AGENT, ATCHISON, TOPEKA & SANTA
FE RAILWAY COMPANY, ET AL.

Submitted September 19, 1924. Decided October 31, 1924

Rates on sand, in carloads, from Turner, Kans., to Bolivar and Cabool, Mo., found unreasonable, and to Galloway and Cassidy, Mo., not unreasonable.

Hal R. Lebrecht for complainant.

T. M. Woodward and *L. P. Nash* for defendants.

REPORT OF THE COMMISSION

DIVISION 3, COMMISSIONERS HALL, CAMPBELL, AND COX

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant pumps sand from the Kaw River at Turner, Kans., and ships it to various destinations. It alleges by complaint filed November 17, 1923, as amended, that the rates charged on four carloads of sand, shipped between March 9, 1919, and November 24, 1919, from Turner to Cassidy, Galloway, Bolivar, and Cabool, Mo., were unreasonable and, as compared with the rates from Serridge, Kans., unduly prejudicial. Reparation is asked. The claims were presented informally within the statutory period. Rates will be stated in cents per 100 pounds.

Complainant's plant is on the south side of the Kaw River about 0.75 mile northwest of Turner, a station on the main line of the Atchison, Topeka & Santa Fe, about 0.75 mile west of the Kansas City, Mo.-Kans., switching limits and about 7 miles west of Kansas City, Mo. Shipments are billed from Turner. Serridge is a local station on the Kansas City, Kaw Valley & Western, an electric railway not made a party defendant, on the opposite side of the Kaw River from Turner. At the time when the shipments moved the Kansas City rate applied from Serridge. The destinations are local points on the St. Louis-San Francisco near Springfield, Mo.

No joint commodity rates applied and charges were collected at the combination of local commodity rates to and beyond Kansas City on the shipments to Galloway and Cassidy, and at the joint

class E rates from St. Joseph, Mo., applicable under the intermediate rule from Turner, to Bolivar and Cabool. The rates contemporaneously in effect from Kansas City were 6 cents to Galloway, 199 miles; 7 cents to Cassidy, 206 miles; 5.5 cents to Bolivar, 151 miles; and 7.5 cents to Cabool, 269 miles. The Kansas City rate was established from Turner to Bolivar on December 30, 1919, and to the other destinations on December 31, 1919. Complainant seeks reparation to the basis of the rates applicable from Kansas City and subsequently applied from Turner.

In *Kaw River Sand & Material Co. v. A., T. & S. F. Ry. Co.*, 51 I. C. C. 350, decided November 2, 1918, we found that the maintenance of higher rates on sand, in carloads, from Turner to points within 150 miles of Kansas City than those contemporaneously maintained from producing points within the territory adjacent to the Kansas City switching district subjected complainant therein to undue prejudice and unduly preferred its competitors at the other producing points. This prejudice we required to be removed. In complying with that order the carriers established the Kansas City basis of rates from Turner to points within 150 miles of Kansas City, and continued the higher basis to other destinations. Subsequently, upon the dates heretofore mentioned, the Kansas City basis was voluntarily applied from Turner to other points, including the destinations here considered. The Kansas City combination in all instances was 1 cent per 100 pounds in excess of the Kansas City rate. When the shipments moved to Bolivar and Cabool the combination of intermediate rates to and from Kansas City was 6.5 cents and 8.5 cents, respectively.

No evidence was presented in support of the allegation of undue prejudice and the subsequent reduction of the rates assailed does not establish their unreasonableness. The ton-mile earnings under the rates assessed to Galloway and Cassidy were 7 mills and 7.8 mills, respectively. We have frequently found that a joint rate which exceeds the aggregate of the intermediate rates is *prima facie* unreasonable, and no evidence was presented by defendants in justification of any higher basis of rates to Bolivar and Cabool than the Kansas City combination.

The shipment to Bolivar weighed 122,000 pounds and freight charges in the sum of \$115.90 were collected. The shipment to Cabool weighed 78,840 pounds and freight charges in the sum of \$157.68 were collected. They were billed in the name of the Kaw River Sand Company as consignor, and complainant's name does not appear on any of the transportation papers. The consignor of the shipments was the selling agent of complainant. The shipments

were made for and on behalf of complainant and the freight charges were borne by it.

We find that the rates assailed were not unduly prejudicial; that the rates to Galloway and Cassidy were not unreasonable; and that the rates to Bolivar and Cabool were unreasonable to the extent that they exceeded the Kansas City combinations. We further find that the shipments were made as described; that complainant paid through its sales agent and bore the charges thereon at the rates herein found unreasonable; that it was damaged thereby; and that it is entitled to reparation in the amount of \$127.27, with interest.

An appropriate order will be entered.

93 I. C. C.

No. 14798

NEW YORK STABLE MANURE COMPANY v. DIRECTOR GENERAL, AS AGENT, PENNSYLVANIA RAILROAD COMPANY, ET AL.

Submitted April 3, 1924. Decided October 31, 1924

Rates on stable manure from Jersey City, N. J., to destinations in New Jersey, Pennsylvania, Delaware, Maryland, and Virginia not found unreasonable or unduly prejudicial. Complaint dismissed.

Katzenbach & Hunt and *Horace J. Farlee* for complainant.
William Meade Fletcher, jr., and *Henry Wolf Bikelé* for defendants.

Royal T. McKenna for Director General of Railroads, as agent.

REPORT OF THE COMMISSION

DIVISION 3, COMMISSIONERS HALL, CAMPBELL, AND COX

BY DIVISION 3:

Exceptions were filed by the complainant to the report proposed by the examiner.

Complainant, a corporation, prays for reparation and reasonable rates for the future because of alleged erroneous methods of defendants in applying general percentage increases and reductions in rates on June 25, 1918, and other dates on stable manure from Jersey City, N. J., on ex-water traffic from New York, N. Y., to destinations in New Jersey, Pennsylvania, Delaware, Maryland, Virginia, "and other States." It is alleged that by reason of the methods employed in making these increases the resulting rates were unreasonable and unduly prejudicial. Rates will be stated in cents per net ton.

Complainant gathers these shipments in New York and conveys them by scow or car float to Jersey City, where they are loaded into cars from the scows or picked up by the railroad from the car float for transportation to destinations. Out of the rate published from Jersey City an allowance of 35 cents a ton is made to complainant for the water ferriage from New York to Jersey City. The amount of this allowance is not in issue. The general increases mentioned, with one exception, were applied to the gross rate, or rate including

the allowance, after which the allowance was deducted. Complainant's contention is that the allowance should first have been deducted, then the percentage increase applied to the net rate, and the allowance added back to the net rate as increased. The one exception was in connection with *Increased Rates, 1920*, 58 I. C. C. 220. As a result of that proceeding 40 per cent was added to the gross rate on August 26, 1920. Defendants on November 1, 1921, voluntarily canceled the resulting rates and published rates equal to the net rates of August 25, 1920, plus about 15 per cent and the allowance of 35 cents. The only complaint against that increase is that the net rate was too high because of the erroneous method of making the previous increases. The following table compares the present rates with the rates as they would be if increased in the manner viewed as proper by complainant. The rate to Finley, N. J., is used as typical of the situation:

	Published	Sought
Apr. 14, 1918	\$1. 21	\$1. 21
Apr. 15, 1918	1. 40	1. 30
June 25, 1918	1. 80	1. 50
Aug. 26, 1920	2. 50	2. 00
Nov. 1, 1921	2. 00	1. 65
Apr. 15, 1922	1. 85	----

Defendants question complainant's method of "rounding out" to even 5-cent or 10-cent units the rates resulting from its own method of applying the increases, and state that, properly rounded out and subjected only to the revisions required by us, the rates in issue would be on about the same general level as the present rates, after applying the voluntary reduction of November 1, 1921, as shown by the following representative comparisons:

	Present	Sought
To Lancaster, Pa	\$2. 00	\$1. 99
To Georgetown, Del	2. 35	2. 37
To Franklin City, Va	2. 70	2. 74
To Cape May, N. J	2. 10	1. 99
To Salisbury, Md	2. 35	2. 24
To New Church, Va	2. 80	2. 87
To Cape Charles, Va	2. 80	2. 87
To Finley, N. J	1. 85	1. 99

The chief competitors of complainant ship from Philadelphia. The following table shows the relative rates from Jersey City and Philadelphia to destinations suggested as typical by complainant:

	From Jersey City			From Philadelphia	
	Distance	Rate per ton	Rate less 35 cents allowance	Distance	Rate per ton
	<i>Miles</i>			<i>Miles</i>	
Lancaster, Pa.	147	\$2.00	\$1.65	79	\$1.75
Georgetown, Del.	213	2.35	2.00	125	2.00
Cape May, N. J.	171	2.10	1.75	113	1.85
Franklin City, Va.	267	2.70	2.35	179	2.35
Avondale, Pa.	135	1.65	1.30	47	1.15

The local rates from Jersey City, Newark, and Elizabeth, N. J., to most of the destination territory here considered are the same as the ex-water rates from Jersey City, but the allowance makes the latter rates 35 cents lower than the local rates from the other points.

To points on the Maryland-Delaware-Virginia peninsula the rates from Jersey City, ex-water, are usually 35 cents higher than from Philadelphia, for an additional distance of 90 miles. At the latter destinations are large consumers of complainant's product.

The reasonableness of the rates charged, and not strict conformity with the prescribed method of making percentage increases or reductions in their predecessors, is the controlling consideration, *Anaconda Copper Mining Co. v. Director General*, 57 I. C. C. 723, 80 I. C. C. 481, *Sprague Tire & Rubber Co. v. Director General*, 80 I. C. C. 285. From the above comparisons and other data of record the rates complained of do not appear unreasonable, or unduly preferential of Philadelphia or other points of origin. These rates were increased in the same manner as all other rates of defendants which reflected allowances. No reason appears for making an exception to that method in this instance.

We find that the rates in issue were not and are not unreasonable or otherwise unlawful. The complaint will be dismissed.

No. 15340

SAN ANTONIO PAPER COMPANY *v.* SAN ANTONIO &
ARANSAS PASS RAILWAY COMPANY ET AL.

Submitted September 19, 1924. Decided October 31, 1924

Rates on newsprint paper, wrapping paper, and paper napkins, in carloads, from Little Falls, Minn., and Port Edwards, Nekoosa, Rhinelander, and Green Bay, Wis., to San Antonio, Tex., between October, 1921, and June, 1922, inclusive, found unreasonable. Reparation awarded.

U. S. Pawkett and *J. M. Elder* for complainant.

J. C. Mangham for defendants.

REPORT OF THE COMMISSION

DIVISION 3, COMMISSIONERS HALL, CAMPBELL, AND COX

BY DIVISION 3:

Complainant, a corporation jobbing fine and coarse papers at San Antonio, Tex., alleges that the rates on newsprint paper, wrapping paper, and paper napkins, in carloads, shipped between October 19, 1921, and June 20, 1922, from Little Falls, Minn., and Port Edwards, Nekoosa, Rhinelander, and Green Bay, Wis., to San Antonio were unjust, unreasonable, and unduly prejudicial to San Antonio and unduly preferential of Houston, Tex. It asks reparation. Rates will be stated in cents per 100 pounds.

Complainant paid on all of its shipments of newsprint and wrapping paper a rate of \$1.17, and on one carload of paper napkins from Green Bay a rate of \$1.96. It asks reparation to the basis of rates found reasonable in *Minnesota & Ontario Paper Co. v. N. P. Ry. Co.*, 66 I. C. C. 571, namely, 82 and 83 cents, respectively, on newsprint paper from Port Edwards and Little Falls; 90 and 91.5 cents, respectively, on wrapping paper from Nekoosa and Rhinelander; and \$1.095 on paper napkins from Green Bay. The rates to the basis of which reparation is asked became effective June 20, 1922.

In the case cited a general readjustment was made of all rates on certain kinds of paper, including those named above, from points in Wisconsin, Minnesota, Michigan, and Canada to destinations in the West, Southwest, and Mississippi Valley. The only finding as to rates in effect prior to the decision of the case was in connection

with shipments to Wichita, Kans., and Oklahoma City and Okmulgee, Okla., as those were the only shipments upon which reparation was asked. It was found that during the respective periods between June 25, 1918, and August 25, 1920, and prior to June 25, 1918, rates to those points were unreasonable to the extent that they exceeded rates made by deducting from the rates prescribed for the future the percentage of increases authorized by us on July 29, 1920, and by the Director General of Railroads, in General Order No. 28.

In *Waco Chamber of Commerce v. Director General*, 73 I. C. C. 708, we awarded reparation on shipments of newsprint paper to Waco, Tex., from International Falls, Minn., and Fort Frances, Ontario, made between May 29, 1918, and February 2, 1920, both inclusive, to the basis of rates prescribed in the case cited on shipments made subsequent to August 26, 1920, and during the periods from June 25, 1918, to August 25, 1920, and prior to June 25, 1918, to the basis of said rates less the percentage increases above referred to. In *Democrat Printing Co. v. Director General*, 74 I. C. C. 595, and *Hale-Halsell Co. v. C., R. I. & P. Ry. Co.*, 83 I. C. C. 313, we followed the cases cited and awarded reparation on shipments from various points of origin considered in *Minnesota & Ontario Paper Co. v. N. P. Ry. Co.*, *supra*, to destinations in Oklahoma made both prior and subsequent to the date of decision in that case.

The only evidence introduced by defendants was as to the operations of the San Antonio & Aransas Pass Railway.

Complainant paid and bore the freight charges on all of the shipments upon which it asks reparation. Its testimony as to the undue prejudice suffered by it was that prior to the general readjustment Houston took a rate of 85 cents on newsprint paper from the Fox River group, while San Antonio paid \$1.17. In the readjustment the two points were placed upon a parity. Houston and San Antonio compete in the jobbing of paper to a large portion of Texas. No damage, apart from that covered by our findings herein as to the reasonableness of the rates, has been shown as a result of any undue prejudice which may have existed, and as the rates are now on a parity it will not be necessary to pass upon that issue.

We find that the rates assailed were unreasonable to the extent that they exceeded 82 and 83 cents, respectively, on newsprint paper from Port Edwards and Little Falls; 90 and 91.5 cents, respectively, on wrapping paper from Nekoosa and Rhinelander; and \$1.095 on paper napkins from Green Bay. We further find that complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged thereby in the amount of the difference between the charges paid and those which would have ac-

crued at the rates herein found reasonable; and that it is entitled to reparation, with interest. Complainant should comply with Rule V of the Rules of Practice.

No. 14826

CULLUM & BOREN COMPANY ET AL. *v.* CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY ET AL.

Submitted June 5, 1924. Decided October 31, 1924

Rate charged on one carload of earthenware jugs, insulated and metal jacketed, from Macomb, Ill., to Dallas, Tex., found unreasonable. Reparation awarded.

A. L. Reed for complainants.

F. B. Clark and *H. C. Bush* for defendants.

REPORT OF THE COMMISSION

DIVISION 3, COMMISSIONERS HALL, CAMPBELL, AND COX

BY DIVISION 3:

Exceptions were filed by complainants to the report proposed by the examiner.

Complainants, Cullum & Boren Company and J. W. Crowds Drug Company, corporations doing a general wholesale business at Dallas, Tex., allege that the rate charged on one carload of earthenware jugs, insulated and metal jacketed, shipped February 13, 1923, from Macomb, Ill., to Dallas was unreasonable. We are asked to prescribe a reasonable rate for the future and to award reparation. Rates will be stated in amounts per 100 pounds.

The shipment weighed 34,040 pounds and moved over the Chicago, Burlington & Quincy to Kansas City, Mo., Missouri Pacific to O. K. Junction, Okla., Kansas City, Oklahoma & Gulf to Denison, Tex., and Houston & Texas Central to destination, 846 miles. The aggregate charges, computed upon one-and-one-half times the first-class rate, or \$3.69, were \$1,256.08.

The shipment was billed as one carload to the Cullum & Boren Company, but only 20,424 pounds of the jugs belonged to that company, the remainder being the property of the J. W. Crowds Drug Company.

The jugs consisted of earthenware containers, each of 1-gallon capacity, incased and sealed in metal jackets and insulated to maintain the temperature of articles of food and drink to be contained therein. These jugs were not manufactured for commercial purposes prior to 1922 or 1921, although similar containers of articles of food and drink, such for example, as thermos bottles, thermalware, and Aladdin jars, bottles, or jugs have been on the markets for some time. At the time of movement there was no specific rate or rating on "earthenware jugs, insulated and metal jacketed." But the governing classification contained the following rule:

Rule 17. When articles not specifically provided for, nor embraced in the classification as articles "N. O. I. B. N.", are offered for transportation, carriers will apply the classification provided for articles which, in their judgment, are analogous.

The rating of one-and-one-half times first class was that applicable on "jugs, glass, insulated and metal jacketed," any quantity.

At the time of movement the classification also carried a class B rating on "Pottery: Earthenware or Stoneware—common brown or gray Jugware, consisting of * * * Jars, Jugs, Pans, Pitchers or Pots," in carloads. The contemporaneous class B rate from Macomb to Dallas was \$1.125. At the same time a commodity tariff, carrying a general reference to the classification for rules and regulations, named a specific commodity rate of 61 cents on "Pottery: Earthenware or Stoneware—common brown or gray Jugware, consisting of * * * Jars, Jugs, Pans * * * " from Macomb to Dallas. Effective June 10, 1923, subsequent to the movement, the classification was amended as follows; "Jugs, glass or earthenware, insulated and steel jacketed" fourth class, carloads. During February, 1923, the fourth-class rate from and to the points in controversy was \$1.565. Defendants are willing to award reparation to this basis.

Complainants' principal contention is that the rate charged was inapplicable; and that under the terms of classification rule 17, either the commodity rate or the class B rate should have been assessed. The language of rule 17 definitely restricts the application of its provisions to the *classification* of commodities. It can not be used to determine the application of commodity rates carried in commodity tariffs. Rule 6(b) of Tariff Circular 18-A provides that "commodity rates must be specific and must not be applied to analogous articles."

The article under consideration does not fall within the generic term "pottery, earthenware, stoneware, common brown or gray jugware." An earthenware jug, when insulated and metal jacketed, completely loses its identity as an ordinary earthenware jug or jar.

The value of the insulated metal-jacketed article greatly exceeds that of the ordinary earthenware jug.

Glass and earthenware jugs, insulated and metal jacketed, are adapted to similar uses. Both are susceptible to damage in transit, the glass container to a greater extent, perhaps, than the earthenware container. The value of the latter is less than that of the former.

The rate charged was applicable.

Defendants point out that the fourth-class rating was established at the specific request of the shipper, a manufacturer at Macomb; and that glass jugs, insulated and metal jacketed, were given the same rating as the container under consideration because the two articles, adapted as they are to similar uses, are competitive in the markets.

We find that the rate charged on one carload of earthenware jugs, insulated and metal jacketed, shipped February 13, 1923, from Macomb, Ill., to Dallas, Tex., was unreasonable to the extent that it exceeded \$1.565 per 100 pounds. We further find that the shipment was made as described and that complainants paid and bore the charges thereon; that they were damaged thereby in the amount of the difference between the charges paid and those which would have accrued at the rate herein found reasonable; that complainant Cullum & Boren Company is entitled to reparation in the sum of \$434.01 with interest; and that complainant J. W. Crowdus Drug Company is entitled to reparation in the sum of \$289.34, with interest.

An appropriate order will be entered.

93 I. C. C.

No. 15282

A. F. GILMORE COMPANY v. PACIFIC ELECTRIC RAILWAY COMPANY, DIRECTOR GENERAL, AS AGENT, ET AL.

Submitted September 17, 1924. Decided October 31, 1924

Rate assessed on a tank-car load of petroleum fuel oil shipped from Loftus, Calif., to Bisbee, Ariz., found inapplicable and applicable rate found unreasonable. Waiver of undercharges authorized and reparation awarded.

F. W. Turcotte and *B. H. Carmichael* for complainant.

R. T. McKenna, *R. E. Wedekind*, and *George F. Squires* for defendants.

REPORT OF THE COMMISSION

DIVISION 3, COMMISSIONERS HALL, CAMPBELL, AND COX

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant, a corporation dealing in petroleum and petroleum products at Los Angeles, Calif., alleges by complaint seasonably filed that a commodity rate of 37 cents per 100 pounds charged on a tank-car load of petroleum fuel oil shipped March 20, 1919, from Loftus, Calif., to Bisbee, Ariz., was unreasonable and unduly prejudicial to the extent that it exceeded 34.5 cents and that the applicable rate exceeded the aggregate of the intermediate rates. We are asked to award reparation and to require defendants to waive collection of additional charges claimed under a rate of 70.5 cents per 100 pounds, which was the joint class D rate of 66 cents plus the 4.5-cent increase under General Order No. 28, of the Director General of Railroads.

The shipment, which weighed 81,375 pounds, was purchased from another dealer at Loftus, a station on the Pacific Electric, 27 miles east of Los Angeles, and consigned by the latter as complainant's agent to the vendee at Bisbee. It moved via Los Angeles, thence Southern Pacific and El Paso & Southwestern to destination. It was sold f. o. b. Loftus on the basis of a southern California origin group rate of 34.5 cents. The car was owned by one of the carriers.

Subsequently it developed that the group rate did not apply from Loftus, and a combination rate of 37 cents, based on Stewart, a sta-

tion a short distance west of Loftus, was applied. It was made up of components of 2.5 cents to Stewart and the joint group rate of 30 cents beyond, as of May 25, 1918, plus the 4.5-cent increase authorized by General Order No. 28, under a combination rule in one of the tariffs. Accordingly, an undercharge bill for \$20.34, exclusive of war tax, was sent to vendee at Bisbee and referred to and paid by complainant. This constitutes the amount of the reparation sought. The tariffs also carried a straight combination rate of 3 cents to Stewart and the group rate of 34.5 cents beyond, or 37.5 cents. But it was afterwards found that the joint rate of 70.5 cents was applicable, and defendants have presented claim for the undercharges. These complainant seeks to have waived. This rate exceeded the aggregate of intermediates and thus was in contravention of section 4 of the interstate commerce act.

The group rate of 34.5 cents applied from a large area in southern California, the great majority of the points being more distant from Los Angeles than Loftus. The distances from a few of these points, some of which are on short lines, over routes, with few exceptions, through Los Angeles, are from Bakersfield, McKittrick, and Olig, typical of San Joaquin Valley points, 780, 826, and 828 miles, respectively; from Betteravia, on the Santa Maria Valley road, north of Santa Barbara, 811 miles; and from San Pedro, Wilmington, and numerous other surrounding points, between 625 and 750 miles. The distance from Loftus to Bisbee is 637 miles. Complainant competes with many other refiners and dealers throughout this territory, who ship under the group rate. Effective September 10, 1919, this rate was extended to stations on the Pacific Electric east of Stewart, including Loftus. This road was not under Federal control.

The group rate of 34.5 cents is the 30-cent rate on fuel oil from Bakersfield and Los Angeles to Arizona points prescribed by us in 1916 in *Pacific Creamery Co. v. S. P. Co.*, 42 I. C. C. 93, plus the 4.5-cent increase under General Order No. 28, and would have yielded on this shipment earnings of 10.8 mills per ton-mile and 44 cents per car-mile. The applicable rate would produce earnings slightly over double these amounts.

Defendants introduced no evidence, contending that the rates have not been shown to be unreasonable under section 1, that no proof of damage has been shown under section 3, and that no reparation can be awarded because of the fourth-section departure.

No proof of damage because of any undue prejudice which may have existed was submitted and it is, therefore, unnecessary to pass upon that allegation.

We find that the rate assessed was inapplicable; that the applicable rate was unreasonable to the extent that it exceeded 34.5 cents; that the complainant made the shipment as described; that it paid and bore the charges thereon; that it has been damaged thereby; and that it is entitled to reparation in the amount of \$20.34, with interest. Defendants should waive collection of the undercharges.

An order awarding reparation will be entered.

23 I. C. C.

No. 14629

ARMOUR & COMPANY *v.* LOUISVILLE & NASHVILLE
RAILROAD COMPANY ET AL.

Submitted March 24, 1924. Decided October 31, 1924

Rates on canned meats, in carloads, from Atlanta, Ga., to Chicago, Ill., found not unreasonable. Complaint dismissed.

Paul E. Blanchard and *W. W. Manker* for complainant.

L. L. Drescher and *Frank W. Gwathmey* for defendants.

REPORT OF THE COMMISSION

DIVISION 3, COMMISSIONERS HALL, CAMPBELL, AND COX

BY DIVISION 3:

Exceptions were filed by defendants to the report proposed by the examiner, and the case was orally argued. Our conclusions differ from those recommended by the examiner.

Complainant, a corporation, manufactures and distributes food products at Chicago, Ill., and at other points. By complaint seasonably filed, as amended, it alleges that the rates charged on 21 carloads of canned meats shipped from Atlanta, Ga., to Chicago, between November 1, 1921, and October 1, 1922, were and are unreasonable. Reparation and reasonable rates for the future are sought. Rates will be stated in cents per 100 pounds.

The goods had been packed by complainant for the army during the war and shipped from its plants at Chicago and Kansas City, Mo. After the close of the war they were surplus stock, and, having been unsuitably packed for domestic or foreign trade, were repurchased by complainant and moved to its Chicago plant for repacking and resale. Although a packing plant is located at Atlanta, canned meat normally does not move to points north of the Ohio River, because of the competition of Middle West packers.

The initial carrier was the Nashville, Chattanooga & St. Louis in all instances. On leaving its rails 18 cars moved from Martin, Tenn., over the Illinois Central, 2 cars moved from Nashville, Tenn., over the Louisville & Nashville to Louisville, Ky., and the Pennsylvania beyond, and 1 car from Nashville over the Louisville & Nashville to Evansville, Ind., and the Chicago & Eastern Illinois beyond.

The hauls were 854, 785, and 733 miles, respectively, and the average loading 64,425 pounds. Ordinary box-car equipment was used. Charges were assessed at the applicable fifth-class rates of 83 cents to the Ohio River and 31.5 cents beyond prior to July 1, 1922, and 74.5 cents and 28.5 cents, respectively, on and after that date, minimum 36,000 pounds. The component north of the Ohio River is not assailed.

A contemporaneous commodity rate of 39.5 cents prior to July 1, 1922, and 35.5 cents on and after that date, applied from Atlanta to the Ohio River crossings, when for beyond, on canned milk, oysters, fish, fruits, jellies, preserves, pork and beans, and vegetables, minimum 36,000 pounds. Adjustment is desired to this basis.

The transportation characteristics of canned meats and of canned vegetables and other articles taking the same rate are practically identical, and the service in one direction is substantially the same as that in the reverse direction. Both classes of commodities have the same classification ratings in all three territories. They take the same rates north of the Ohio River and in western trunk-line territory. These canned-goods lists include an extensive group of commodities, many of considerably higher value than canned meats. Between a limited number of points in the Southeast the canned-goods commodity list includes both meats and vegetables and also fruits, fish, milk, etc. Certain other articles rated classes 5, 6, and B, such as green salted hides, ammoniacal liquor, molasses and sirup, soap and soap powders, lard substitutes, tallow grease, and talc, are shown to take commodity rates from Atlanta to Ohio River crossings considerably lower than the class rates, a few as low as the rates here sought.

The rate on the complete canned-goods list, including meats, vegetables, fruits, etc., southbound from Ohio River crossings to Atlanta was 67.5 cents prior to July 1, 1922, and 61 cents on and after that date. A substantial movement southbound of both canned meats and vegetables is said to exist.

Defendants point out that the northbound rates sought by complainant applied only on a limited number of canned articles and not on the general list. They were established to enable southern vegetable and fruit canners to compete with northern canners. The movement is said to be from points other than Atlanta, the latter being named merely because it is a basing point in the general rate structure. These rates are shown to have been much lower than the prevalent rates on canned goods other than meats for approximately equal hauls southbound from Ohio River crossings to destinations generally throughout the Southeast, of which the 67.5-cent and 61-cent rates to Atlanta, quoted above, are representative. Hence, they

are said to be improper for isolated shipments of canned meats, which normally move in the reverse direction.

Complainant contends that the class basis in the Southeast is excessive for movements of this quantity of canned meats. Commodity rates apply generally throughout this territory wherever there is substantial traffic. The class rates assessed were established by us in *Rates to and from Nashville*, 61 I. C. C. 308, decided April 12, 1921. The whole southern class-rate structure is now under readjustment in Docket No. 13494, *Southern Class Rate Investigation*. The present northbound scale is approximately 5 per cent lower than that southbound. Car-mile earnings at the through rates varied from 77.7 cents to \$1.006 according to the route used, the component south of the Ohio River yielding from 98.2 cents to \$1.198 and that north of the river from 50.3 cents to 70.7 cents. Ton-mile earnings south of the Ohio River varied from 30.5 mills to 37.2 mills, and north of the river from 15.6 mills to 22 mills. The cars, however, were loaded nearly 50 per cent above the average loading of this traffic, which is between 40,000 and 45,000 pounds.

The record indicates that the probability of any traffic northbound other than sporadic or isolated shipments is remote. A northbound commodity rate south of the Ohio River on these shipments as low as or lower than that applicable in the reverse direction, under which traffic moves more or less regularly, does not seem justified under these circumstances. Nor is it advisable during the pendency of the *Southern Class Rate Investigation*, *supra*, to prescribe for the future what would be practically paper rates.

We find that the rates assailed were not unreasonable. The complaint will be dismissed.

CAMPBELL, *Commissioner*, dissenting:

The majority report is so full of facts pointing to unreasonableness that it would be a waste of words and space to point them out in a separate expression. I shall content myself with the statement of my conviction that the assailed rates were unreasonable to the extent that the components south of the Ohio River exceeded those contemporaneously applicable in the reverse direction.

No. 15662

PEYTONA LUMBER COMPANY ET AL. v. CHESAPEAKE
& OHIO RAILWAY COMPANY ET AL.

Submitted September 11, 1924. Decided October 31, 1924

Rates on lumber, in carloads, from points in Group 12 on the Guyandotte branch of the Chesapeake & Ohio in West Virginia to destinations in central territory and in Canada found not unreasonable or unduly prejudicial. Complaint dismissed.

W. P. Tingley for complainants.

J. S. Patterson for defendants.

REPORT OF THE COMMISSION

DIVISION 3, COMMISSIONERS HALL, CAMPBELL, AND CO

BY DIVISION 3:

Exceptions were filed by complainants to the report proposed by the examiner.

Complainants, the Peytona Lumber Company and the Logan Planing Mill, are corporations producing lumber. The former operates mills at Omar and Christian, W. Va., and the latter at Logan, W. Va., in Group 12 on the Guyandotte branch of the Chesapeake & Ohio, hereinafter called defendant. By complaint filed February 18, 1924, they allege that the rates on lumber, in carloads, from Group 12 to destinations in central territory and in Canada are unreasonable and unduly prejudicial. We are asked to prescribe reasonable and nonprejudicial rates for the future. Rates will be stated in cents per 100 pounds.

Complainants produce hardwood lumber principally, with a small production of poplar. Both kinds take the same rates in practically all instances.

Defendant's Guyandotte branch extends in a southerly direction from Barboursville, W. Va., a main-line point about 9 miles east of Huntington, W. Va. A number of other branches connect with the main line at points both east and west of Barboursville. Among these is the Coal River branch, extending in a southerly direction from St. Albans, W. Va., which is between Barboursville and Charleston, W. Va.

Defendant's lumber rates to the territories here considered are grouped both as to main-line and branch-line points of origin. The rates from the branch-line groups, which are published as joint rates, were originally made by adding specific amounts or differentials, lower than the local rates, to the rates from the junction points. Beginning immediately south of Barboursville the points on the Guyandotte branch are divided into three groups designated as 10, 11, and 12. In the same order the points on the Coal River branch are designated as Groups 10, 13, and 11, with an additional group, designated 9, on a subbranch line. The basis of the complaint is primarily the relation of the rates from Group 12 to those from Coal River Groups 11 and 13. The through distances from Group 12 and Coal River Group 11 are about equal, and complainants contend that the rates from the former should not exceed those from the latter. The table following, taken from exhibits of record, shows the rates and average distances from these three groups to representative destinations.

To—	From Guyandotte Group 12		From Coal River Group 11		From Coal River Group 13	
	Average distance	Rate	Average distance	Rate	Average distance	Rate
	<i>Miles</i>	<i>Cents</i>	<i>Miles</i>	<i>Cents</i>	<i>Miles</i>	<i>Cents</i>
Chicago, Ill.	530	33	539	31	515	30
Detroit, Mich.	403	28	401	26.5	388	25
Akron, Ohio.	354	28	352	26.5	338	25
Cincinnati, Ohio.	246	25	244	22.5	230	22
Indianapolis, Ind.	356	28.5	354	27	340	26.5
Pittsburgh, Pa.	305	28.5	350	27	350	26.5

The table below shows the average distances from the same three groups to the main-line junctions and the amounts by which the rates therefrom exceed those from the junctions to the same destinations:

Destination	Over Barboursville from Guyandotte Group 12		Over St. Albans from Coal River Group 11		Over St. Albans from Coal River Group 13	
	Average distance	Rate difference	Average distance	Rate difference	Average distance	Rate difference
	<i>Miles</i>	<i>Cents</i>	<i>Miles</i>	<i>Cents</i>	<i>Miles</i>	<i>Cents</i>
Chicago.	73.8	8	44	6	31	5
Detroit.	73.8	7.5	44	6	31	4.5
Akron.	73.8	7.5	44	6	31	4.5
Cincinnati.	73.8	9	44	6.5	31	6
Indianapolis.	73.8	8	44	6.5	31	6
Pittsburgh.	73.8	8	44	6.5	31	6

As will be noted, the amounts by which the present branch-line rates exceed those from the junctions are not the same to all destinations. These variations are said to have been caused by the ap-

plication of the several general increases and the general reduction to the respective branch-line and junction-point rates.

Barboursville and St. Albans are in the same main-line rate group. This grouping of the junctions, together with the fact that the branch-line differentials are in general adjusted with regard to differences in distances to the junctions, results in higher through rates from Group 12 than from Coal River Group 11, although the through distances are approximately equal. The average distances to Barboursville are 73.8 miles from Group 12 and 74.2 miles from Coal River Group 11. Westbound traffic from the Coal River branch moves through Barboursville. With the exception of its Greenbrier branch, which extends in a northerly direction from Ronceverte, W. Va., and from which the junction-point rates are maintained because of the competition of the Baltimore & Ohio and the Western Maryland, the rates from points on all of defendant's branch lines are higher than from the main-line junctions, the differences varying with the length of the branch-line hauls. The distances from the Greenbrier branch to the territories here considered are materially greater, while the rates are the same as or but slightly higher than those from Group 12.

Complainants contend that because of the grouping of Barboursville and St. Albans, producers on the Coal River branch in effect have the advantage of a haul of approximately 30 miles from St. Albans to Barboursville without cost, and that the rates should be based on the through distances rather than the differences in the branch-line hauls. They also contend that the local rates from the junctions, which cover terminal services at those points, are not proper bases to be used in making rates on traffic from the branch lines, upon which, it is said, no terminal service is performed at the junctions. But the record does not establish that the grouping of Barboursville and St. Albans and the practice of maintaining rates from branch-line points which exceed the junction-point rates by amounts which in general are based on the distances to the junctions are improper. It appears that the rates from the branch lines may properly be higher than those from the junctions. Another contention is that if this method of making rates is to obtain, the amount by which the rates from a particular branch-line group exceed those from the junction should be uniform to all destinations. It can not be found upon the record that the rates assailed are unreasonable because of the present variations.

In *Johnson & Son v. C. & O. Ry.*, 24 I. C. C. 698, we approved from Gill, W. Va., a point in Group 10 on the Guyandotte branch, 36 miles from Barboursville, a rate which exceeded the rate from Barboursville to the same extent that the rate from Meeks, Ky., a point on defendant's Big Sandy branch 55 miles from Catlettsburg,

Ky., the main-line junction, exceeded that from Catlettsburg, namely, 3 cents. We said:

* * * The rates on the Guyandotte branch are on a parity with those on the Coal River branch, extending from St. Albans, and bear an equitable relationship to rates from other branches east thereof.

The average distance from Group 10 to Barboursville is 21.6 miles, or 52.2 miles less than the average distance from Group 12, and the amounts by which the present rates therefrom exceed those from Barboursville are, for example, 4.5 cents to Chicago, Indianapolis, and Detroit and 5.5 cents to Columbus, Ohio. The same differences obtain in the rates from Coal River Group 10 over St. Albans, the average distance to St. Albans being 10 miles. From Group 11 on the Guyandotte branch the average distance to Barboursville is 49.4 miles, and the amounts by which the rates therefrom exceed those from Barboursville are 6 cents to Chicago and Detroit and 6.5 cents to Indianapolis and Columbus.

Complainants compare the rates under attack with rates maintained for comparable distances in various other sections, as for example, from main-line and branch-line points on the Baltimore & Ohio in Pennsylvania and West Virginia to central territory and from points in the Southeast and Mississippi Valley territory to Mississippi and Ohio River crossings and to central territory. The record does not show whether or not the circumstances and conditions obtaining generally in the territories where the compared rates apply are substantially similar to those surrounding the traffic here in question, although it may be inferred that conditions on branch lines of the Baltimore & Ohio in West Virginia do not differ materially from those on defendant's branch lines. The exhibited branch-line rates for similar distances are in some instances higher than, in others lower than, and in still others the same as those under attack. The earnings under the rates assailed, which range from 11.4 mills to 22.5 mills per ton-mile for distances of 223 to 567 miles to representative destinations, do not appear to be excessive, especially in view of the branch-line service performed.

Defendant states that the class rates and the commodity rates generally from its Guyandotte branch and other branches are made in the same way as are the rates on lumber. It compares the rates assailed with higher rates for similar distances from Hale, W. Va., and Sulphur, Ky., main-line points on the Louisville & Nashville and Norfolk & Western, respectively, in the same general territory, to destinations in central territory. It also compares the rates from Barboursville and other main-line junctions with the current sixth-class rates, and explains that the rates on lumber were based on the old central-territory scale and were in general the same as the sixth-

class rates, and were never revised to reflect the higher scale prescribed in *C. F. A. Class Scale Case*, 45 I. C. C. 254.

Complainants compete with producers on the Coal River branch and on other parts of defendant's line as well as elsewhere. Their evidence on the question of competition is for the most part general in character. Whatever disadvantage they may operate under does not appear to be due to any improper relationship of defendant's rates. The record does not establish that any other rates shown result in undue preference or prejudice.

We find that the rates assailed are not unreasonable or unduly prejudicial. The complaint will be dismissed.

93 I. C. C.

No. 15454

COUNTY OF BECKER, MINN., *v.* DIRECTOR GENERAL, AS
AGENT

Submitted September 24, 1924. Decided October 31, 1924

1. Charges, based upon estimated weights, assessed on gravel, in carloads, shipped from Detroit, Minn., to Lake Park, Minn., during Federal control, not shown to have been inapplicable.
2. Complaint that those charges were unreasonable found barred and dismissed.

Carsten L. Jacobson for complainant.*John F. Finerty* and *Fred W. Heid* for defendant.

REPORT OF THE COMMISSION

DIVISION 3, COMMISSIONERS HALL, CAMPBELL, AND COX

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant, a municipal corporation of Minnesota, alleges by complaint filed November 17, 1923, that the charges collected on 50 carloads of gravel shipped from Detroit, Minn., to Lake Park, Minn., between September 10 and November 19, 1919, were inapplicable and unreasonable. Reparation only is sought.

The claim was presented as an overcharge on May 4, 1922, within the period of limitation provided by section 206(c) of the transportation act, 1920, as amended. Complaint that the charges collected were unreasonable, was not presented within one year following the termination of Federal control, and is therefore barred.

The points of origin and destination are both located on the Northern Pacific, hereinafter called the carrier. The shipments, 46 large and 4 small carloads of gravel, were not weighed or measured. There were no track scales either at the loading or the unloading point. No tariff provision was made for ascertaining the weight of gravel shipped in cars which were not weighed. A circular, not filed with us or with the State commission, issued by the carrier to all of its station agents and freight-train conductors, provided for estimated weights on numerous commodities, including gravel, to be used under such conditions. Under this circular the contents of the larger cars were estimated at 37 cubic yards each, and of the smaller ones at 31 cubic yards each, and the weight at

3,200 pounds per cubic yard; or an aggregate weight of 5,843,200 pounds. Based upon this weight, freight charges amounting to \$1,460.80 were collected at the applicable rate of 2.5 cents per 100 pounds. Defendant points out that it is a common practice for carriers to issue such circulars as well as to enter into written agreements, through their weighing and inspection bureaus, with shippers, respecting the use of estimated weights on shipments which are not weighed; and that unless these rules and agreements are incorporated as a part of the tariffs they are not usually filed with regulatory bodies. This practice was considered by us in *In Re Weighing of Freight by Carrier*, 28 I. C. C. 7, and not condemned.

Complainant does not question the estimate of a total bulk of 1,826 cubic yards, but contends that the weight of the gravel, based upon tests made in April, 1922, with gravel from the same pit, did not exceed 2,680 pounds per cubic yard, and urges that on that weight basis there are overcharges amounting to \$237.38.

These tests, made under the supervision of the Minnesota State Public Examiner's Office, consisted of weighing one cubic yard of gravel taken from a wet section of the pit from which these shipments came. This gravel was said to be representative of the average run of material from that pit and was measured in two boxes, each of one cubic yard capacity. The resulting weights were 2,670 and 2,680 pounds per cubic yard. These tests, made two and a half years after the shipments moved, leave much to be desired in the way of proof of the weight of the gravel shipped. Complainant's witnesses had no knowledge of the loading of the cars or of the condition of the gravel. Moreover, on brief, counsel for complainant says:

Gravel, being composed of many different minerals, silicates and impurities and containing varying amounts of moisture depending upon the vicinity from which it is taken, is subject to a large variation in weight * * *.

As previously stated, we are here concerned only with the applicability of the charges assessed. These charges were computed at the applicable rate and the record will not support a finding that the weights used were erroneous.

We find that it has not been shown that the shipments were overcharged. The complaint will be dismissed.

No. 15504

EDWARDS CONSTRUCTION COMPANY ET AL. *v.* JONESBORO, LAKE CITY & EASTERN RAILROAD COMPANY ET AL.

Submitted July 9, 1924. Decided October 31, 1924

Rates on crushed stone, in carloads, from Cape Girardeau, Mo., to Bowman, Ark., found unreasonable. Reparation awarded. Waiver of undercharges authorized.

A. U. Tadlock for complainants.

Eugene Sloan, H. B. Agnew, and B. E. Thomas for defendants.

REPORT OF THE COMMISSION

DIVISION 3, COMMISSIONERS HALL, CAMPBELL, AND COX

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

This complaint was filed December 10, 1923, by W. C. Ribenack and J. E. Edwards, copartners doing business under the trade name of Edwards Construction Company, at Jonesboro, Ark., and formerly engaged in building roads in Craighead County, Ark. Complainants allege that the rates charged on 63 carloads of crushed stone shipped between July 27, 1922, and January 10, 1923, from Cape Girardeau, Mo., to Bowman, Ark., were unreasonable and that the rate applicable was unreasonable and in violation of the aggregate-of-intermediates clause of the fourth section of the interstate commerce act. The prayer is for reparation. Rates are stated in cents per 100 pounds.

All of the shipments moved over the St. Louis-San Francisco to Blytheville, Ark., and the Jonesboro, Lake City & Eastern to destination. The short-line route, 134 miles, is over the same lines via Leachville, Ark. On most of the shipments a rate of 15.5 cents was charged, composed of separately established commodity rates of 9 and 6.5 cents to and from Blytheville, respectively. On the others a combination commodity rate of 13.5 cents was charged, composed of factors of 8 and 5.5 cents to and from Leachville, respectively. A joint class E rate of 28.5 cents from Cape Girardeau to Bowman was applicable, and the shipments were therefore undercharged. Shortly

after the first of these shipments was made complainants asked defendants to publish a commodity rate, and on March 18, 1923, a joint commodity rate of 8 cents was established. Complainants seek reparation to the basis of this rate. Defendants admit that the applicable rate was unreasonable to the extent that it exceeded the aggregate of the intermediate rates.

Complainants call attention to contemporaneous rates on crushed stone from Cape Girardeau of 6.5 cents to Arkansas points on the main line of the St. Louis-San Francisco for an average distance of 157 miles and 7 cents to branch-line stations on the same road for an average distance of 162 miles. A rate of 7 cents on silica sand from Gerler, Mo., to points on the Jonesboro, Lake City & Eastern for an average distance of 132 miles is also instanced. Comparison is made also with rates of 18.5 cents on crushed stone from St. Louis, Mo., and other points in Missouri and Illinois to numerous points in Arkansas, the average distance being 317 miles, and 11 cents on sand, gravel, and chatts from Joplin, Mo., and adjacent points to Arkansas destinations for an average distance of 294 miles. In *Memphis-Southwestern Investigation*, 77 I. C. C. 473, we prescribed a rate of 7 cents on crushed stone for 134 miles, to which an arbitrary of 0.5 cent is added for hauls over so-called class C lines, which include the Jonesboro, Lake City & Eastern. Defendants assert that a rate made on the lowest combination would have been reasonable for the period in which these shipments moved.

In January, 1921, the Home Accident & Insurance Company, which had signed a contractor's bond as surety for complainants, assumed active direction of complainants' business and a general manager for complainants was selected by this company. The general manager placed the orders for the stone composing these shipments and paid the freight charges in complainants' name, although some shipments were consigned to him individually and others to a road commissioner. Because of defendants' contention that complainants were not the real parties in interest, counsel for complainants moved at the hearing that the complaint be amended by making the Home Accident & Insurance Company a party complainant. Defendants objected to this amendment. The examiner ruled that the amendment would be permitted subject to defendants' objections and any further exceptions to that ruling which they saw fit to take. The general manager for complainants selected by the insurance company testified that at times funds were advanced to him by the insurance company. Apparently some, if not all, of the charges on these shipments were paid out of such funds. But he testified also that the identity of the construction company was maintained until the work was entirely completed and that the

items of expense and all merchandise were charged to complainants. The insurance company is not here making any claim adverse to that of complainants and its rights, whatever they may be, against complainants under the contractor's bond are not within our competence. It is therefore unnecessary to pass upon complainants' motion.

We find that the rates assailed were unreasonable to the extent that they exceeded 8 cents; that complainants made the shipments described in the complaint and paid and bore the charges thereon; that they have been damaged thereby in the amount of the difference between the charges paid and those which would have accrued at the rates herein found reasonable; and that they are entitled to reparation, with interest. Complainants should comply with Rule V of the Rules of Practice. Defendants may waive collection of the outstanding undercharges.

93 I. C. C.

No. 15342

CONTINENTAL FILE COMPANY v. PITTSBURGH, CINCINNATI, CHICAGO & ST. LOUIS RAILROAD COMPANY ET AL.

Submitted September 19, 1924. Decided October 31, 1924

Application of the existing classification ratings on steel files, less than carloads, to shipments of used or worn files from various points in the three classification territories to Anderson, Ind., found not unreasonable or otherwise unlawful. Complaint dismissed.

F. D. Roberts for complainant.

J. L. Aber, F. W. Smith, E. K. Voorhees, and H. C. Bush for defendants.

REPORT OF THE COMMISSION

DIVISION 3, COMMISSIONERS HALL, CAMPBELL, AND COX

BY DIVISION 3:

Exceptions were filed by complainant to the report proposed by the examiner.

Complainant, a corporation manufacturing steel files at Anderson, Ind., alleges that the ratings on files in the three classification territories are and have been unreasonable, unjustly discriminatory, and unduly prejudicial as applied to shipments of so-called worn-out files from various points to Anderson. The prayer is for just and reasonable ratings for the future, and for reparation. As the majority of complainant's shipments are in less-than-carload quantities, and practically all of the evidence relates to the less-than-carload ratings, only such ratings will be referred to and considered.

Under the general heading of "tools," files or rasps, iron or steel, are rated third class in official and second class in southern and western classifications, as are mechanics' tools and iron or steel hardware. Used files are subject to the ratings on "files" without distinction in the classifications or tariffs between the new and used articles. The major portion of complainant's business is the manufacture and sale of new files, but it also recuts and resharpens the working surfaces of files which have become dull from usage. Complainant does not attack the existing classification ratings as applied to new files, but challenges the reasonableness and propriety of applying such ratings to worn files, hereinafter called used files.

Complainant's shipments of used files, most of which are from points in official territory, are obtained from two sources. First, by direct purchase from large users of files which have an accumulation of used files on hand. Complainant's witness testified that these are bought at the prevailing price for heavy melting scrap iron or steel, but admitted that complainant does not generally buy scrap iron as such, the old files being purchased for the purpose of reworking them and with the expectation that they will be found in fit condition to be reworked. The second class of shipments, which comprises the larger part of the traffic, consists of used files which are returned for reconditioning, under contract, by concerns to which new files are sold by complainant. In shipments of the latter class any files which are found to be unfit for reconditioning are scrapped and a uniform allowance of 1 cent per pound, or \$20 per net ton, is made therefor to the shipper. For the files in the shipment which are reworked a price below that for new files is fixed, dependent upon the terms of the agreement with the customer. The saving to this class of customers on files which have been reconditioned is said by complainant to be anywhere from 40 to 50 per cent as compared with the price of new files of the same kind. A witness for defendants testified that in April, 1922, when complainant requested the establishment of a lower rating on used files, the statement was made that after these files had been reconditioned they had a value of 15 per cent less than new files of the same kind; also that the value of used files was then given as 3.5 cents per pound, which would amount to \$70 per net ton. The average market price of heavy melting scrap iron or steel during March, 1923, is shown as \$14.50 per ton. At that time the average price of file steel from which to make new files was \$120 per net ton, and the average selling price of new 14-inch files was \$478 per net ton.

Complainant is of the opinion that because the files here considered are worn and dull when returned they are entitled to the ratings applicable to scrap iron or steel, which are fourth class in official and western, and sixth class in southern territory; or the same ratings as apply to iron or steel castings or forgings, in the rough, which are rated fourth class in all three territories. It takes the position that used files are entitled to the fourth-class rating not only as a matter of reasonableness, but also as a matter of the proper interpretation and application of rule 17 of the classification, which provides for so-called analogous articles, on the ground that the articles in question are very similar to scrap iron and to blanks, stampings or unfinished shapes, castings, and forgings, in the rough state, all of which are rated fourth class. But rule 17 applies only

"when articles not specifically provided for, nor embraced in the classification as articles 'N, O, I, B, N' are offered for transportation." Files are specifically rated and the articles in issue, samples of which are exhibited of record, must be regarded as files even though their working surfaces are dulled. They differ from new files only in that they appear old and soiled, and the cutting edges are more or less worn in comparison with new files. Presumably they are no longer fit for effective and economical service by the concerns which return them to be reconditioned, but defendants suggest that further use as files might be made of them by others for less exacting work. The question of how much more, if any, use of them as files can be made is a matter of individual judgment and it would obviously be impracticable, as well as open the door for discrimination, to leave the determination of this question to the discretion of carrier's agents in the application of any lower bases of rates that might be established on used than on new articles of the same kind.

The classification, as well as practically all tariffs naming rates on scrap iron, provides that such rates will apply on scraps or pieces of iron or steel having value for remelting purposes only. This limitation upon the application of scrap-iron rates has been upheld by us in a number of cases. *Weissbaum & Co. v. Director General*, 53 I. C. C. 681. In *Schwartz v. St. L.-S. F. Ry. Co.*, 51 I. C. C. 145, we said:

Iron or steel articles which have a recognized commercial value other than that of the elementary metal from which they are manufactured are not properly described as scrap iron.

The ratings applicable to blanks, stampings, castings, and forgings in the rough state are also restricted by notes in the classification to articles of this kind which are not further finished or processed.

Complainant also contends that used files are no more valuable than scrap iron, and not as valuable as some of the other articles mentioned which take lower ratings than files, but this is not borne out by the record. The used files have at least a potentially greater value for reworking into serviceable files, and this becomes an actuality in the case of all but a relatively small percentage of used files which may be found unfit for reconditioning, and the allowance made for the latter is in excess of the scrap-iron price. The record shows that from one of these used files complainant can produce a good working file at a cost of from 20 to 30 per cent less than from an ordinary piece of scrap metal of the same weight which had not previously been made into a file. Defendants point out further that scrap iron moves in much larger volume than files, and nearly always in carloads.

Defendants take the position that the ratings on files are reasonable and proper, and in harmony with the ratings applicable to many comparable articles instanced by them; and state that the service performed is the same whether the articles be new or used. They contend that they can not consistently maintain lower ratings on old or worn articles than those applying to new ones of the same kind, and that if they begin to draw such distinction a precedent would be established which, if applied to the numerous articles of commerce transported, both new and secondhand, would result in endless complications. The practice of applying the same rating on used as on new files extends to all other kinds of tools and machinery, such as agricultural implements, etc. Many such articles are shipped secondhand or are returned to manufacturers for repairs or reconstruction.

We have had occasion to consider the same or similar questions in a number of previous cases. In *Minneapolis Traffic Asso. v. C. & N. W. Ry. Co.*, 23 I. C. C. 432, after a full discussion of the difficulties which would be encountered in the practical application of different rates on old and on new articles of the same kind, we said at page 437:

* * * we are not prepared to lay down the principle that old or secondhand articles must be treated differently from new or that value is the controlling element in making rates. Such of these articles or parts as are in fact scrap are entitled to the scrap rate, but if they have any value as the articles which they originally purported to be, we do not feel that we can require the carriers to transport them at other than the regular tariff rates applicable to the new or originally transported article.

The evidence will not support a finding of unjust discrimination or undue prejudice.

We find that the existing classification ratings on files are not shown to be unreasonable or otherwise unlawful as applied to shipments of used files. The complaint will be dismissed.

93 I. C. C.

No. 14588

ROYAL MILLING COMPANY v. DIRECTOR GENERAL, AS
AGENT

Submitted June 23, 1924. Decided November 6, 1924

Rate on wheat, in carloads, from points in western Nebraska to Great Falls, Mont., found not unreasonable. Complaint dismissed.

L. F. Nichols for complainant.

John F. Finerty and *Thomas M. Woodward* for defendant.

REPORT OF THE COMMISSION

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND LEWIS

BY DIVISION 3:

Exceptions were filed by complainant to the report proposed by the examiner, and the case was orally argued.

Complainant, a corporation, is a miller of grain at Great Falls, Mont. It alleges by complaint seasonably filed that the rate charged for the transportation of 36 carloads of wheat from Bridgeport, Dalton, Lorenzo, Gurley, and Sidney, Nebr., to Great Falls between October 29 and November 22, 1919, was unreasonable, and prays reparation. The rate prayed was subsequently established, as will later appear, and the rate for the future is not in issue. Rates are stated in cents per 100 pounds.

The points of origin named are in western Nebraska on that branch of the Chicago, Burlington & Quincy Railroad, hereinafter called the Burlington, which extends south from Alliance, Nebr., on the main line to Billings, Mont., to Brush, Colo., on the main line to Denver, Colo. They are all within the 48 miles stretch between Bridgeport and Lorenzo. The shipments moved north and west over the Burlington to Billings and the Great Northern beyond. The distance from the most central point of origin to Great Falls is 773 miles.

The rate charged was 56 cents, and was the rate applicable from Group J under transcontinental grouping. Group J includes points from the Missouri River west to Denver. The destinations under that rate are blanketed from Montana to the Pacific coast. The rate covers milling in transit at Montana points on shipments to the coast. Prior to October, 1919, complainant had made no shipments under this rate, having been able to procure sufficient wheat for its

Great Falls mill in Montana. During 1919 a drought and resulting crop failure required the purchase of wheat in western Nebraska. On October 8, 1919, complainant requested the St. Paul district freight committee to establish a rate of 28 cents on wheat from western Nebraska to Great Falls, that rate having been previously established on feed from North Dakota into Montana. The St. Paul committee recommended the establishment of that rate, but the director of traffic at Washington, upon the recommendation of the Chicago committee, issued, on October 30, 1919, freight-rate authority for a rate of 36 cents from Group J, which became effective on November 28, 1919, on one day's notice, limited to expire on June 30, 1920, and limited also to the following Montana destinations: Billings west to Butte on the Northern Pacific, Billings northwest to Great Falls on the Great Northern, and Great Falls southwest to Butte on the Great Northern, which comprised the drought area. There was local wheat available to other Montana mills. The 56-cent rate from Group J was continued in effect to those mills and to points west thereof to the Pacific coast. To points east of the Montana drought area the rate from Group J graded up into the 36-cent rate at Billings. The 36-cent rate to points within the drought area did not permit of milling in transit.

The rate of 56 cents for 773 miles yielded 14.48 mills per ton-mile and, based on the average loading of these shipments, 85,335 pounds, 61.82 cents per car-mile. The 36-cent rate subsequently established yielded 9.31 mills per ton-mile and 39.74 cents per car-mile. Many of the comparisons submitted by complainant are of earnings under the 56-cent rate from various points in the respective origin and destination group areas. These include Bridgeport to Spokane, Seattle, and Bellingham, Wash., and Portland, Oreg.; Lincoln, Nebr., to Great Falls; Denver, Colo., to Spokane, and to Dalton, Nebr.; and Denver and Trinidad, Colo., to Portland, Oreg.; for distances 1,036 to 2,026 miles, yielding from 5.53 to 10.81 mills per ton-mile and from 23.58 to 46.12 cents per car-mile. Other comparisons include rates of 37 cents from St. Paul, Minn., to Oswego, Mont., 864 miles, yielding 8.5 mills per ton-mile and 36.54 cents per car-mile; 61 cents from Minneapolis, Minn., to Seattle, Wash., 1,766 miles, yielding 6.9 mills per ton-mile and 29.47 cents per car-mile; and 31 cents from Sioux City, Iowa, to Culbertson, Mont., 782 miles, yielding 7.93 mills per ton-mile and 33.82 cents per car-mile. A comparison especially emphasized is a rate of 36 cents from Spion Kop, Mont., to Omaha, Nebr., 1,084 miles, yielding 6.6 mills per ton-mile and 28.33 cents per car-mile. This rate, as increased from 30 cents, was the result of *Omaha Grain Exchange v. C., B. & Q. R. R. Co.*, 26 I. C. C. 553, in which we found, in 1913,

that the rates to Omaha from stations Spion Kop to Hesper, inclusive, on the Great Northern between Billings and Great Falls should not exceed, in connection with the Burlington east of Billings, the rates contemporaneously maintained over the Great Northern from the same points of origin to Minneapolis, which, at that time, ranged from 30 to 32 cents. The rates attacked in that case were local rates to Billings plus 35 cents to Omaha. The distance from Spion Kop to Omaha was stated as approximately 1,081 miles.

Defendant compares the rate charged of 56 cents for 773 miles yielding 14.48 mills per ton-mile, and the 36-cent rate subsequently established, yielding 9.31 mills per ton-mile, with the 56-cent rate in its application from points in North Dakota, Colorado, and Nebraska to various Montana points for distances of 419 to 781 miles, yielding from 14.4 to 23.4 mills per ton-mile; also with rates ranging from 55 to 71 cents from points in California to destinations in Nevada, Arizona, and New Mexico, for distances of 548 to 966 miles, yielding from 14.7 to 20.1 mills per ton-mile; and with rates ranging from 46 to 75.5 cents from points in Nebraska, Wisconsin, and Kansas to destinations in Arizona and New Mexico, for distances of 548 to 941 miles, yielding from 16.9 to 17.9 mills per ton-mile.

As above shown, the 56-cent rate charged on these shipments applies between extensive blankets of origin and destination and affords comparisons favorable both to complainant and to defendant, when set against the 36-cent rate, depending upon whether the origin and destination points are selected from the near or far sections of the two groups. In other words, the 36-cent rate would appear relatively low when compared with the 56-cent rate from and to points in the near sections of the origin and destination blankets and relatively high when compared with that rate from and to points in the far sections thereof. Comparisons of this nature afford little evidence of the reasonableness of the 36-cent rate, as a basis for reparation. Nor does the rate from Spion Kop to Omaha, emphasized by complainant, warrant the reduction prayed, when the commission's finding as to that rate is examined. We did not establish that rate as an inherently reasonable rate. We found, as stated, that the rate from Spion Kop to Omaha should not exceed the rate contemporaneously applicable from Spion Kop to Minneapolis. We did not pass upon the inherent reasonableness of either the Minneapolis or Omaha rate.

The 36-cent rate was an emergency rate, voluntarily established by the Director General of Railroads in order to relieve drought conditions. Complainant had the full use of that rate from November 28, 1919, until it expired by limitation on June 1, 1920. Complainant

also had available, and used, the 56-cent rate to the Pacific coast with milling in transit at Great Falls. This record is not convincing that we would have ordered the establishment of the 36-cent rate, as reasonable, if a formal complaint had been filed. That is the final test of its propriety as the basis for an award of reparation. The fact that the rate was not established until some of complainant's shipments had moved does not change the situation.

We find that the rate charged on the shipments in question has not been shown to have been unreasonable or otherwise unlawful. The complaint will be dismissed.

93 I. C. C.

No. 14439¹NEWS CORPORATION v. MISSOURI PACIFIC RAILROAD
COMPANY ET AL.

Submitted June 25, 1924. Decided October 25, 1924

Rate on newsprint paper, in carloads, from Sault Ste. Marie, Ontario, Canada, to St. Joseph, Mo., found not unreasonable. Complaints dismissed.

W. H. Fitzpatrick for complainant.

A. H. Lossow, H. B. Ramsey, C. C. P. Rausch, C. F. Parsons, H. A. Mintz, and L. G. Tuttle for defendants.

REPORT OF THE COMMISSION

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND McMANAMY

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant, a corporation publishing a newspaper at St. Joseph, Mo., alleges that the rate of 44 cents charged between August 28, 1920, and December 17, 1921, inclusive, on newsprint paper, in carloads, from Sault Ste. Marie, Ontario, Canada, hereinafter called the Soo, to St. Joseph was unreasonable to the extent it exceeded 41 cents. Reparation only is sought. Rates are stated in cents per 100 pounds and do not reflect the 10 per cent reductions of July 1, 1922.

St. Joseph is on the east bank of the Missouri River about 60 miles north of Kansas City, Mo. For many years the two cities, which by direct lines are approximately equidistant from the Soo, have taken the same rates on newsprint paper from that point, and from other producing points in Michigan, Wisconsin, and Minnesota. That this parity is proper is tacitly accepted by complainant and defendants. Complainant's exhibits show what is termed a short-line distance by workable routes from the Soo to St. Joseph of 871.2 miles. This route includes portions of the lines of six carriers. Defendants' exhibits contain computations based upon a short-line distance of 866 miles. The shipments moved over various routes in accordance with the consignor's instructions. The route over which a majority of the shipments moved was the Canadian Pacific, the Minneapolis, St. Paul & Sault Ste. Marie, and the

¹This report also embraces No. 14439 (Sub-No. 1), *Same v. Chicago Great Western Railroad Company et al.*, and No. 14439 (Sub-No. 2), *Same v. Chicago, Rock Island & Pacific Railway Company et al.*

Chicago, Rock Island & Pacific, 957 miles. A number of shipments moved over somewhat longer routes including four and five railroads.

In *Rates on News Print Paper from Sault Ste. Marie*, 26 I. C. C. 13, we approved a rate of 26 cents, minimum 36,000 pounds, from the Soo to Kansas City and Omaha, Nebr. It was this rate, subjected to the general percentage increases of June 25, 1918, and August 26, 1920, which was charged on the shipments in issue. The question of the proper relationship between rates to Kansas City from the Soo and from producing points in Wisconsin on the Fox and Wisconsin Rivers, hereinafter referred to as the Fox River group, was presented in the case cited. The rate approved from the Soo was 6 cents higher than the rate from the Fox River group. In *Lake Superior Paper Co. v. M., St. P. & S. Ste. M. Ry. Co.*, 42 I. C. C. 109, the same spread in the rates to points west of the Missouri River was found not improper. Modified by the subsequent general percentage increases, the spread of 6 cents became 10 cents, the difference between the two rates at the time of these shipments.

In *Lake Superior Paper Co. v. Director General*, 61 I. C. C. 709, 64 I. C. C. 33, we prescribed the relationship between carload rates on newsprint paper from the Soo to Kansas City and St. Joseph and from the Fox River group to the same destinations. No rates were prescribed from any group, as only relationships were in issue. Subjected to the increase of August 26, 1920, the differential so established in the rate to Kansas City and St. Joseph from the Soo over the rate from the Fox River group became 7 cents. The contemporaneous rate from the Fox River group to the two cities was 34 cents. Accordingly, a rate of 41 cents from the Soo to Kansas City and St. Joseph was established, effective December 20, 1921. Complainant seeks reparation to this basis on shipments moving prior to that date.

In *Minnesota & Ontario Paper Co. v. N. P. Ry. Co.*, 66 I. C. C. 571, hereinafter called the *Paper case*, we approved the rate of 34 cents from the Fox River group to Kansas City, and affirmed the earlier finding with respect to the proper relationship between that rate and the rate from the Soo to Kansas City and St. Joseph.

The *Paper case* effected a general readjustment of all rates on certain kinds of paper, including newsprint, from points in Wisconsin, Minnesota, Michigan, and Canada to destinations in the West, Southwest, and Mississippi Valley. Maximum reasonable rates from the Fox River group to representative destinations, including Kansas City, were prescribed. Rates from other groups and producing points were found unduly prejudicial to the extent that their

differentials over or under the Fox River rates exceeded specified amounts. The following excerpt is from the report, page 582:

The rates hereinafter prescribed represent substantial reductions to most points west and southwest of the Missouri River cities. These reductions are clearly justified by the facts of record, particularly by comparisons with rates to certain points in that territory which may be accepted as reasonable, inasmuch as they are either based on rates voluntarily established by the carriers or approved by us in other cases. To points on and east of the Missouri and Mississippi rivers, increases as well as reductions in the rates on newsprint will result from our findings. Considering the present distribution of the traffic and the regrouping of paper and paper articles which will accompany the changes in rates, it seems probable that the total revenues on the traffic will not be greatly reduced.

In several cases concerning shipments of newsprint from origin points considered in that case to points west and southwest of the Missouri River cities we have awarded reparation on shipments prior to the date of the adjustment to the basis of the substantially lower rates therein found reasonable. Where the origin points were those from which rates differentially related to the Fox River rates had been prescribed in the *Paper case*, it was said that in effect maximum reasonable rates from such points had thereby been fixed.

Complainant relies in large part upon the *Paper case*, and asks, in effect, that we apply findings therein retroactively to prior shipments from the Soo to St. Joseph. That a rate somewhat lower than the rate charged was prescribed for the future does not necessarily show that the former rate was unreasonable. Especially is this so where the new rate is part of an extensive readjustment. One of the tests of the reasonableness of a rate is its relation to the whole rate structure of which it is a part. An element of the new adjustment was a rate from the Soo to Kansas City and St. Joseph of 41 cents. But whether the former rate of 44 cents was more than reasonable is dependent, in part, upon its relation to contemporaneous rates, particularly rates on newsprint in the same general territory, the general level of which was not disturbed. That issue was not foreclosed by the decision in the *Paper case*.

Complainant compares the differences in rates in effect at the time of shipments under consideration from the several groups and producing points treated in the *Paper case* to St. Joseph with the differences in distances to show that the differences against the Soo in the rates were too great. The rate from the Soo to St. Joseph was 10 cents higher than the rate from the Fox River, northern Wisconsin, and Minnesota groups. According to complainant's figures the distance from the Soo to St. Joseph is 279.5 miles greater than the average distance from points in the three groups. At 10 cents per 100 pounds the ton-mile earnings for a haul of 279.5 miles are 7.15 mills. Upon

complainant's showing, corresponding ton-mile earnings, computed on the basis of the several rate differentials, on the excesses in distance to St. Joseph from the International Falls, Minn., group and from Groos, Manistique, and Munising, Mich., over the average distance from points in the Fox River, northern Wisconsin, and Minnesota groups, were 2.23, 1.69, 1.19, and 2.05 mills, respectively. Based upon these lower ton-mile earnings on the additional hauls, the spread between rates from the Soo and from the groups taking the 34-cent rate would have ranged from 3.1 cents downward. Similar computations show approximately the same results when the distance from the Fox River group alone, or the average distance from the Fox River group to St. Joseph, Kansas City, and Omaha, Nebr., is substituted for the average distance from the three groups named to St. Joseph.

Complainant points out that in the first report in *Lake Superior Paper Co. v. Director General*, *supra*, we stated that operating conditions from the Soo and from the other producing points and groups mentioned on hauls toward the Missouri River were substantially similar.

Defendants' exhibits show that over the routes of movement the hauls ranged from 957 to 1,073 miles in length. The 44-cent rate charged yielded ton-mile earnings for these distances of from 8.2 to 9.2 mills. Defendants instance rates on newsprint returning ton-mile earnings ranging from 9.2 to 12.3 mills on hauls from producing points in Minnesota, Wisconsin, and Michigan to St. Joseph. The following table, from defendants' exhibit, shows the ton-mile yield under rates on newsprint applicable at the time of the shipments under consideration, with distances over available routes. The readjustment in these rates effected in the *Paper case* included increases as well as reductions.

	The Soo		International Falls, Minn.		Sartell, Minn. ¹		Eau Claire, Wis. ²		Appleton Wis. ³	
	Distance	Yield	Distance	Yield	Distance	Yield	Distance	Yield	Distance	Yield
	Miles	Mills	Miles	Mills	Miles	Mills	Miles	Mills	Miles	Mills
St. Joseph, Mo.-----	866	10.2	772	9.3	512	13.3	553	12.8	562	12.1
Sioux City, Iowa.-----	759	11.6	547	11.2	287	21.3	352	19.3	564	12.1
Omaha, Nebr.-----	829	10.6	647	11.1	387	17.6	432	15.7	542	12.6
Des Moines, Iowa.-----	743	10.5	571	10.7	336	17.3	344	16.9	456	12.7
Mason City, Iowa.-----	622	11.4	450	12.9	211	25.6	223	22.9	335	15.2
Lincoln, Nebr.-----	884	11.0	679	11.9	419	18.6	484	15.9	597	12.9
Joplin, Mo.-----	1,031	10.7	950	11.4	714	15.1	723	14.5	727	14.4

¹ Minnesota group. ² North Wisconsin group. ³ Fox River group. ⁴ Under the rate assailed.

The average earnings per ton-mile in 1921 on newsprint, in carloads, of the defendants Missouri Pacific and Minneapolis, St. Paul & Sault Ste. Marie were 13.54 and 11 mills, respectively.

In western classification newsprint, in carloads, is rated fifth class and pig iron, in carloads, class D. Based on the average weight per car of shipments of the two commodities moved in 1921 by one of the defendants, the rate charged on newsprint and the contemporaneous commodity rate on pig iron for the same haul would have yielded earnings per car of \$211.40 and \$222.75, respectively. An exhibit introduced by defendants listed commodity rates on canned goods from Eau Claire, Wis., to points in Kansas, Nebraska, and Missouri which yielded ton-mile earnings of from 16.2 to 29.4 mills on hauls ranging in length from 484 to 864 miles. The exhibit showed that the rates on lumber for those hauls yielded ton-mile earnings ranging from 12.8 to 18.2 mills, and that for hauls from International Falls, Minn., to several of those destinations, nearly all comparable in length with the haul from the Soo to St. Joseph, the lumber rates yielded ton-mile earnings ranging from 10.9 to 15.1 mills.

According to defendants' exhibit the rates on iron and steel articles, which load considerably more heavily than newsprint, from Pittsburgh, Pa., to St. Paul, Minn., 866 miles, and from Pittsburgh to Des Moines, Iowa, 826 miles, return ton-mile earnings of 15.4 and 13.6 mills, respectively. Other rates on these articles with distances and ton-mile earnings, as shown in defendants' exhibit, are as follows:

To—	From Chicago, Ill.			From Duluth, Minn		
	Distance	Rate	Ton-mile earnings	Distance	Rate	Ton-mile earnings
	<i>Miles</i>	<i>Cents</i>	<i>Mills</i>	<i>Miles</i>	<i>Cents</i>	<i>Mills</i>
St Joseph, Mo.....	469	46	19.6	613	52.5	17.1
Kansas City, Mo.....	461	46	20.4	633	52.5	16.6
Topeka, Kans.....	517	56.5	21.9	685	63	18.4
Fort Scott, Kans.....	537	55	20.5	731	61.5	16.8
Wichita, Kans.....	663	88	26.5	831	96	23.1
Denver, Colo.....	1,026	97	18.9	1,034	97	18.8
Norfolk, Nebr.....	580	64	22.1			
Lincoln, Nebr.....	535	50.5	18.9	551	50.5	18.3
Sioux City, Iowa.....	514	46	18	422	46	21.8
Des Moines, Iowa.....	358	32.5	18.2	410	40	19.5

We find that the rate assailed was not unreasonable. The complaints will be dismissed.

No. 15276

DYER FRUIT BOX MANUFACTURING COMPANY *v.* BALTIMORE & OHIO RAILROAD COMPANY ET AL.

Submitted June 2, 1924. Decided November 3, 1924

Charges collected on poultry crates, in carloads, from Dyer, Tenn., to Cincinnati, Ohio, during August, September, and October, 1920, found legally applicable. Complaint dismissed.

C. E. Widell and John M. Cate for complainant.

No appearance for defendants.

REPORT OF THE COMMISSION

DIVISION 2, COMMISSIONERS AITCHISON, ESCH, AND CAMPBELL

BY DIVISION 2:

No exceptions were filed to the report proposed by the examiner.

Complainants are C. O. Ewell, C. H. Ewell, H. D. Hayes, R. W. Ewell, and L. F. Ewell, copartners engaged in the manufacture of box and crate material at Dyer, Tenn. By complaint filed September 26, 1923, they allege that the additional charges sought to be collected by defendants on three carloads of poultry crates consisting of wood crate material, wired, in bundles, shipped from Dyer to Cincinnati, Ohio, on August 17, September 9, and October 14, 1920, are unjust and unreasonable, unjustly discriminatory, unduly prejudicial, and in excess of those applicable at the legal tariff rate, in violation of the interstate commerce act. We are asked to require defendants to cease and desist from these violations of the act. Court proceedings were instituted by defendants on July 21 and August 30, 1923, to recover additional charges on the shipments under consideration and the complaint herein was filed within 90 days thereafter in accordance with the provisions of paragraph (3) of section 16 of the act. Rates are stated in cents per 100 pounds.

A rate of 19.5 cents was charged on the shipment that moved August 17, and 24.5 cents on those that moved September 9 and October 14. These rates were applicable on lumber and articles taking lumber rates, including "box or crate material, wood, wired, loose or in bundles," during the period of movement. Defendants seek in their court proceedings now pending to collect additional charges on the shipments here under consideration to the basis of

the class rates to 51.5 and 64.5 cents, composed of class N to Rives, Tenn., and fifth class beyond, then applicable on poultry coops, knocked down.

The question presented is whether the articles shipped were "crate material" and thus entitled to the lumber rates, or whether they were "poultry coops, knocked down."

In *Rates on Lumber and Lumber Products*, 52 I. C. C. 598, 620, the following item appears in the lumber list:

Box and crate material (other than cigar-box material), knocked down flat, including wire bound, consisting of ends, sides, tops, and bottoms of boxes, crates, egg cases, and beehives, stenciled or unstenciled, of solid or built-up wood, with or without cleats, loose or in bundles * * * lumber rates.

The evidence in the instant case indicates that the articles shipped consisted of ends, sides, tops, and bottoms of crates which would seem to be comprehended by the description "crate material" in the above-quoted item. Moreover, the rate charged was a commodity rate, while that which defendants contend was applicable is a class rate.

No appearance was entered on behalf of defendants.

We find that the lumber rates originally charged on the shipments under consideration were applicable. The complaint will be dismissed.

No. 14824

W. A. FLOWERS AND R. H. STELL, TRADING AS FLOWERS
& STELL, *v.* NORFOLK SOUTHERN RAILROAD COM-
PANY ET AL.

Submitted December 14, 1923. Decided October 31, 1924

Rate on cotton shirt forms, in less than carloads, from Baltimore, Md., to Washington, N. C., found not unreasonable. Complaint dismissed.

Junius D. Grimes for complainant.

W. H. Brooks for Norfolk Southern Railroad Company.

J. B. Brantley for Atlantic Coast Line Railroad Company.

REPORT OF THE COMMISSION

DIVISION 3, COMMISSIONERS HALL, CAMPBELL, AND COX

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainants, copartners under the firm name of Flowers & Stell, manufacture shirts at Washington, a point in North Carolina on the Norfolk Southern and Atlantic Coast Line. By complaint filed December 6, 1923, they allege that the rate of \$1.15 charged on cotton goods cut into shirt forms, in less than carloads, from Baltimore, Md., to Washington since October 31, 1922, has been and is unreasonable, to the extent that it exceeded and exceeds 65 cents. We are asked to prescribe a reasonable rate for the future. Rates are stated in cents per 100 pounds.

Each shirt form consists of approximately 12 pieces of cotton goods so cut as to collectively make up the shirt desired. These forms are shipped from Baltimore to complainant at Washington in wooden packing boxes, the packages weighing from 300 to 1,000 pounds each. Complainants sew these forms together into shirts, attach buttons, pack the finished shirts in the boxes in which the forms were received, and ship them back to the consignor of the forms at Baltimore. The weight of the boxes filled with shirt forms is approximately the same as when filled with finished shirts.

In 1908 defendants established a water-and-rail commodity rate of 37 cents on shirt forms from Baltimore to Washington. Prior to October 31, 1922, it had become 65 cents. On the latter date this commodity rate was canceled and an any-quantity first-class rate of

\$1.15, applicable on dry goods not otherwise indexed by name, became applicable on these forms.

Complainant's case is based principally on the fact that, as above shown, the rate sought was formerly in effect, and that at the time this rate was canceled there was in effect over defendants' lines a commodity rate of 60 cents on finished shirts from Washington to Baltimore.

Defendants state that the commodity rate of 65 cents was canceled because other manufacturers of shirt forms in North Carolina had requested the establishment of commodity rates lower than the first-class rates and, in defendants' opinion, the first-class rates should be applied. They urge that it would be unduly prejudicial to charge the first-class rate from other points while maintaining a commodity rate from Washington lower than the first-class rate. Defendants instance first-class rates which are higher than \$1.15 for similar and greater distances from and to various points.

Defendants admit that the rate on shirt forms from Baltimore to Washington should not exceed the rate on finished shirts in the opposite direction, but urge that the 60-cent rate on the finished shirts is subnormal. The latter rate was canceled October 15, 1924, and the first-class rate now applies in both directions.

We find that the rate complained of was not and is not unreasonable. An order will be entered dismissing the complaint.

Cox, *Commissioner*, dissenting:

The commodity rate whose cancellation occasioned the present complaint was published in 1908 upon representation by a newly established industry that such a rate was necessary in order to enable it to do business at a profit. The commodity rate fostered a manufacturing industry in a small city and was obviously to the carriers' interest as well, as it gave them two hauls, namely one of shirt forms from Baltimore to Washington and one of finished shirts in the reverse direction, which otherwise they would not have enjoyed. It was incumbent upon defendants to justify at the hearing the increased rate resulting from the cancellation of this commodity rate. There is no showing that the commodity rate was unremunerative and the reason given for its cancellation, that other shippers requested like commodity rates, is not a justification of the resulting increased rate. Defendants appeared at the hearing without having canceled or attempted to cancel a rate of 60 cents on finished shirts in the reverse direction. In my opinion defendants failed to justify the cancellation of the long-established commodity rate. No transportation inequalities should exist which reflect unfavorably upon the natural development of industry.

No. 14821

DAWSON PRODUCE COMPANY *v.* AMERICAN RAILWAY
EXPRESS COMPANY

Submitted April 26, 1924. Decided October 31, 1924

Rates and refrigeration charges on strawberries, in carloads, by express, from points in Louisiana to destinations in Oklahoma, Kansas, and Missouri, found not unreasonable. Complaint dismissed.

H. D. Driscoll, H. E. Ketner, and H. R. Conley for complainant.
A. M. Hartung for defendant.

REPORT OF THE COMMISSION

DIVISION 3, COMMISSIONERS HALL, CAMPBELL, AND COX

BY DIVISION 3:

Exceptions were filed by complainant to the report proposed by the examiner.

Complainant, a corporation, dealing in produce at Oklahoma City, Okla., and other points, alleges by complaint seasonably filed that the rates and refrigeration charges on strawberries, in carloads, by express from certain points in Louisiana to destinations in Oklahoma, Kansas, and Missouri were and are unreasonable. We are asked to prescribe reasonable rates and refrigeration charges for the future and to award reparation on shipments made since April 6, 1921. Rates will be stated in amounts per 100 pounds, unless otherwise indicated, and do not include the reductions authorized in *Express Rates, 1922*, 83 I. C. C. 606.

The basic express rates in effect throughout the entire country resulted from our orders in *Express Rates, Practices, Accounts, and Revenues*, 24 I. C. C. 380, 28 I. C. C. 131, and 35 I. C. C. 3. For rate-making purposes the country was divided into five zones, and each zone into blocks and subblocks. One standard, or first-class rate, was prescribed for merchandise, except articles of food and drink. A second-class rate, 75 per cent of the standard or first-class rate, was prescribed for articles of food and drink. When the orders in these cases were served there were in effect a considerable number of specific commodity rates, substantially lower than the rates prescribed, on articles moving in large volume from and to various points. We indicated that the express companies should feel free to continue such rates. The readjustment resulting from our

decision in *Express Rates, 1922, supra*, has no bearing upon the issues herein.

The rates assailed are specific commodity rates. All of the points of origin are in block 1935. The important strawberry-producing points in this block are Hammond, Independence, Ponchatoula, and Tickfaw, La., all on the Illinois Central. The destinations are Wichita, Kans., Joplin, Mo., and Altus, Ardmore, Chickasha, Clinton, Enid, Guthrie, Lawton, McAlester, Muskogee, Oklahoma City, and Tulsa, Okla. At the time of the hearing the rates were \$2.12 to Ardmore, Guthrie, McAlester, Muskogee, and Tulsa, and \$2.33 to the remaining points. Subsequent to the hearing the Joplin rate was reduced to \$2.12. The charges per car for refrigeration were and are \$55.44 to Ardmore, Guthrie, McAlester, Muskogee, and Tulsa, and \$62.37 to the remaining points. The traffic moves over the Illinois Central to Memphis, Tenn., and the Chicago, Rock Island & Pacific and its connections beyond.

The rates to Altus, Ardmore, Chickasha, Clinton, Enid, Lawton, and McAlester were established on November 22, 1921. The second-class rates in force prior to that date are not attacked. The basic rates or the rates to the remaining points were in force many years prior to the decisions in *Express Rates, Practices, Accounts, and Revenues, supra*, and since that period they have been increased only to the extent authorized by us or by the Director General of Railroads.

To support its contention that the rates and refrigeration charges assailed are excessive, complainant compares the average rates on strawberries, average refrigeration charges, average earnings, and average short-line distances from block 1935 to the 13 destinations considered with like rates, charges, earnings, and distances from the same block to 45 selected points in various sections of the country, as follows:

From block 1935 to—	Average distance	Average rate	Average earnings per car-mile	Average refrigeration charges per car	Average refrigeration charges per car-mile
	<i>Miles</i>		<i>Cents</i>		<i>Cents</i>
The 13 destinations under consideration...	1 669	\$2. 25	57. 6	\$59. 70	9
45 selected points.....	1 964	2. 23	39. 9	58. 66	6. 3

¹ Based upon the distance from Hammond, La.

The selected points include large consuming centers, such as Chicago, Ill., St. Louis and Kansas City, Mo., Cleveland, Ohio, and Philadelphia, Pa. The volume of movement to the large markets is greatly in excess of that to the points here considered. During

93 I. C. C.

the year 1923 complainant's shipments from block 1935 aggregated 23 carloads. To points such as Chicago the movement is in trainloads. In most instances the traffic moves over lines other than those composing the short-line routes. The comparison does not reflect the grouping of the rates at destination. For example, a rate of \$2.75 applies from block 1935 to at least a dozen points in the State of New York. Of these, complainant's average includes but two. Averages predicated upon rates to a few points selected from extensive groups do not afford fair comparisons.

The following comparisons are from complainant's exhibit:

From Hammond to—	Distance	Rate	Refrigeration charges per car
	<i>Miles</i>		
Wichita, Kans.	810	\$2.33	\$62.37
Kansas City, Mo.	814	2.12	55.44
Joplin, Mo.	679	2.33	62.37
Parsons, Kans.	679	2.12	55.44
Altus, Okla.	700	2.33	62.37
Decatur, Ill.	710	1.88	55.44
Enid, Okla.	739	2.33	62.37
Springfield, Ill.	749	1.88	55.44

Single rates selected from large groups afford no better comparisons than the average of a few rates taken from groups embracing many points. The rate of \$2.33 applies to Des Moines, Iowa, 1,035 miles over the short line from Hammond. The \$1.88 rate applies to Nashville, Tenn., and Chicago, 585 and 868 miles, respectively, over the short line from Hammond.

Complainant also refers for comparison to numerous rates and refrigeration charges on strawberries from Alabama points in block 1639 and Texas points in blocks 1819, 2228, 2327, 2328, and 2428 to Oklahoma City and other points here considered. The comparative rates are somewhat lower than those assailed, but the record discloses that there is no movement of strawberries, in carloads, from the various blocks referred to. These comparisons give no consideration to the grouping of the rates and, like other comparisons adverted to by complainant, are predicated upon the short-line distances, although such lines do not comprise the established routes of movement in all instances.

The rates on strawberries by express from Hammond to 18 points in Minnesota, South Dakota, Iowa, Nebraska, Illinois, Indiana, Kentucky, and Tennessee are 198.5 per cent of the freight rates on strawberries, in carloads, from and to the same points. This figure forms the basis for complainant's contention that the

rates assailed should be readjusted on the basis of 200 per cent of the distance scale of rates prescribed in *Memphis-Southwestern Investigation*, 77 I. C. C. 473, on fresh fruits and vegetables from, to, or between points in the Southwest but not from and to the points here considered. This scale was prescribed to apply on many relatively low-grade fruits and vegetables as well as on strawberries, an unusually light-loading and highly perishable commodity. For example, it covers apples and pears rated fifth class, and melons, turnips, and beets, rated class C. Strawberries are rated third class. There are no joint commodity freight rates on strawberries from points in block 1935 to the 13 destinations considered. The rates assailed vary from 140.4 to 156.3 per cent of the third-class freight rates from and to the same points.

The rates under attack range from 42.6 to 50.9 per cent of the standard or first-class express rates from and to the same points. The rates on strawberries from block 1935 to 13 of the large markets in the North and East vary from 42.5 to 50.4 per cent of the first-class rates from and to the same points. The general basis for specific commodity rates is 60 per cent of the corresponding first-class rates. It is not unusual for commodities, in carloads, to move on first or second class express rates. Strawberries, in carloads, by express from eastern Maryland and Delaware to Baltimore, Md., Washington, D. C., Philadelphia, Pa., and New York, N. Y., are subject to second-class rates.

According to complainant's exhibit the average charges per car-mile for refrigeration are 6.3 cents from block 1935 to 45 northern points, 7.7 cents from block 1639 to Oklahoma points, 8.4 cents from blocks 1819, 2327, 2328, and 2428 to Oklahoma City, and 8 cents from block 2228 to Oklahoma City. Based upon these figures complainant arrives at an average of averages of 7.6 cents and insists that this figure represents a fair charge per car-mile for refrigeration. During 1923 the ice required to refrigerate complainant's shipments averaged 19,285 pounds per car; the average cost of this ice was \$66.48 per car, or in excess of the highest refrigeration charge assailed.

We find that the rates and refrigeration charges assailed were not and are not unreasonable. The complaint will be dismissed.

INVESTIGATION AND SUSPENSION DOCKET No. 2165
COMMODITY RATES FROM SOUTHWESTERN POINTS

Submitted July 10, 1924. Decided November 11, 1924

Proposed increased rates on cotton piece goods, any quantity, and on junk and scrap iron, in carloads, from Texas, Louisiana, and Oklahoma points to St. Louis, Mo., and other points in defined territories, and on oyster shells, in carloads, from Memphis, Tenn., to Missouri and Kansas points, found not justified. Order entered accordingly.

O. E. Bardon for Southwestern Freight Bureau carriers; *S. G. Reed* for Southern Pacific lines; *George T. Atkins* for Missouri-Kansas-Texas Railroad Company; *J. F. Garvin* for Missouri-Kansas-Texas Railroad Company of Texas and Gulf, Colorado & Santa Fe Railway Company; *J. A. Lynch* for Texas & Pacific Railway Company, Denison & Pacific Suburban Railway Company, and Weatherford, Mineral Wells & Northwestern Railroad Company; *C. H. Wilson* for San Antonio & Aransas Pass Railway Company; and *M. J. Dowling* for Chicago, Rock Island & Gulf Railway Company and Chicago, Rock Island & Pacific Railway Company.

F. A. Leffingwell for Texas Industrial Traffic League and West Texas Chamber of Commerce; *A. L. Dreher* for Scrap Steel Consumers & Shippers Conference and Waste Material Association of Texas; *R. H. Keas* for East Side Manufacturers Association, St. Louis Chamber of Commerce, and Scrap Steel Shippers & Consumers Conference; *F. C. Marzolph* for Muscatine Shippers Association and National Association of Button Manufacturers; *Ed. P. Byars* for Fort Worth Freight Bureau and Worth Mills; *A. L. Reed* for Dallas Chamber of Commerce; *C. A. Willingham* for Waco Chamber of Commerce and Texas Industrial Traffic League; *U. S. Pawkett* for San Antonio Freight Bureau, San Antonio Cotton Mills, and Texas Industrial Traffic League; *A. J. Scrivner* for Worth Mills, Fort Worth, Tex.; *C. W. Payne* for Planters & Merchants Mills, New Braunfels, Tex., and Planters & Manufacturers Cotton Mills, San Antonio, Tex.; *G. M. Knebel* for Texas State Manufacturers Association; *E. A. DuBose* for San Antonio Cotton Mills; *W. L. Steele* for Brazos Valley Cotton Mills; *J. C. Saunders* for Bonham Cotton Mills, Guadalupe Valley Cotton Mills, Cuero, Tex., and Gonzales Cotton Mills, Gonzales, Tex.; *Walter Hogg* for Dallas Cotton Mills; *Clinton Phelps* for Sherman Manu-

facturing Company, Sherman, Tex.; *R. B. Kennedy* for Waxahachie Cotton Mills; *W. B. Munson, jr.*, for Denison Cotton Mills Company; *F. E. McCurdy* and *C. R. Miller* for C. R. Miller Manufacturing Company; *P. M. Keller* for Belton Yarn Mills; *M. Feldman* for American Iron & Metal Corporation; *R. H. Nathan* for Waste Material Dealers Association of Texas; *J. Gatham* for St. Louis Junk Company; *J. P. Hayes* for Chicago Association of Commerce, Chicago, Ill.; *P. H. Mengden* for Mengden & Sons Company, Houston, Tex., and Chicago, Ill.; *L. M. Hogsett* and *R. J. Seaman* for Houston Chamber of Commerce and Texas Industrial Traffic League; *J. W. Pritchard* for Houston Cotton & Twine Mills, Incorporated; *C. W. McKaskle* for Converse & Company; and *A. Culberson* for Texas Cotton Mills Company, McKinney, Tex., and Dallas Textile Mills Company.

REPORT OF THE COMMISSION

McMANAMY, Commissioner:

By schedules filed to become effective June 24 and 25, 1924, and on later dates, respondents proposed to increase the rates on cotton piece goods, any quantity, and on scrap iron and junk, in carloads, from points in Texas, Louisiana, and Oklahoma to St. Louis, Mo., and other points in defined territories, and on oyster shells, in carloads, from Memphis, Tenn., to points in Kansas and Missouri. Upon protests of those interested in the transportation of these commodities, including the Dallas Chamber of Commerce, Fort Worth Freight Bureau, and the Texas Industrial Traffic League, the schedules were suspended until November 21, 1924.

In the *Memphis-Southwestern Investigation*, 77 I. C. C. 473, we prescribed maximum reasonable rates on various commodities between Mississippi River crossings and points in Arkansas, western Louisiana, and southern Missouri. By fourth-section order No. 8600 entered in connection with that proceeding the carriers were required to remove, not later than June 25, 1924, fourth-section departures in rates from Mississippi River crossings, Memphis, Tenn., and south, to the Missouri River crossings and related points, and from points in Louisiana and Texas to St. Louis, Mo., and other points in defined territories. The rates from Texas and Oklahoma on cotton piece goods, scrap iron, and junk to defined territories are now lower than those applicable from the territory embraced in the *Memphis-Southwestern Investigation*, *supra*. Respondents state that the proposed rates were published for the sole purpose of complying with our fourth-section order No. 8600, and removing fourth-section departures at points in Kansas, Missouri, Iowa, Arkansas,

93 I. C. C.

and Oklahoma east of the Kansas City Southern Railway, in the rates from Texas and Oklahoma.

COTTON PIECE GOODS

While cotton piece goods, any quantity, are rated first class in western classification, by exception a third-class rating is applicable from Texas and Oklahoma points. Specific commodity rates substantially lower than third class are in effect from Texas and Oklahoma points to points in defined territories, but respondents propose to cancel these commodity rates, allowing third-class rates to apply. To certain parts of the destination territory no joint class rates are in effect, and combinations of local class rates would become applicable.

The following table shows that substantial increases would result:

From Texas and Oklahoma producing points to—	Present commodity rates	Proposed class rates
	<i>Cents</i>	<i>Cents</i>
St. Louis, Mo.....	83. 5	158
Kansas City, Mo.....	114. 5	158
Chicago, Ill.....	83. 5	176. 5
Louisville, Ky.....	86	165
Cincinnati, Ohio.....	92	176
Indianapolis, Ind.....	93. 5	199. 5
Akron, Ohio.....	106. 5	212. 5
Cleveland, Ohio.....		
Pittsburgh, Pa.....	152. 5	246. 5

¹ Combination rates.

Respondents made no attempt to justify the proposed increased rates on cotton piece goods, and state that they were forced to make the revision to comply with our fourth-section order denying them relief in their rates from Texas and Oklahoma. They further state that the present commodity rates on cotton piece goods from Texas cotton mills were established to points in defined territory with relation to those from southeastern mills; that they do not desire to advance their rates to the third-class basis, and requested permission to confer with shippers to agree upon a more satisfactory basis as a substitute for the one proposed. Certain of respondents' witnesses stated that they desire to continue the present rates if granted fourth-section relief to continue higher rates at intermediate points.

Protestants show that cotton mills are located at 24 points in Texas, with an investment of approximately \$24,000,000, and that most of their output is marketed in this destination territory in competition with cotton mills in southeastern territory. They also point out that their products are a low-grade class of heavy cloth, duck, and sheeting, whereas the movement southbound to points in the terri-

tory embraced in the *Memphis-Southwestern Investigation* is of bleached, dyed, and printed cotton piece goods.

Compliance with our fourth-section order does not require such increases as those here proposed. While it is not disclosed to what extent higher rates apply from intermediate points, apparently there is only one cotton mill located within the territory embraced by the *Memphis-Southwestern Investigation*, and apparently respondents' revenues would not be reduced to any extent by the application from intermediate points of the present rate on cotton piece goods from Texas producing points.

JUNK

The term "junk" includes two descriptions, one containing scrap iron and the other cotton-tie clippings, on which different rates apply. It is proposed to increase the rates on scrap iron and cotton-tie clippings, in carloads, from Texas points to defined territories. The rates on both scrap iron and cotton-tie clippings from Texas points are upon a group basis and the average distance from Texas common points to St. Louis, for example, is said to be about 800 miles. The present rate on scrap iron is 32.5 cents, and proposed 38 cents. Under the scale prescribed in *Memphis-Southwestern Investigation* the rate on scrap iron is 38 cents for distances over 800 miles. A comparison of the present and proposed rates in cents per 100 pounds on scrap iron from representative Texas points, with rates that would result under the scale prescribed in *Memphis-Southwestern Investigation* for actual distances instead of the group basis as proposed, are shown as follows:

To St. Louis, Mo., from—	Distance	Present rate	Proposed rate	Memphis-Southwestern scale
	Miles	Cents	Cents	Cents
Fort Worth, Tex.....	710	32.5	38	35.5
Dallas, Tex.....	686	32.5	38	35
Beaumont, Tex.....	776	32.5	38	37
Galveston, Tex.....	864	32.5	38	38
Texarkana, Ark.-Tex.....	494	30	-----	30
Shreveport, La.....	550	31.5	-----	31.5
Alexandria, La.....	600	33	-----	33
Lake Charles, La.....	700	35	-----	35

The rates from Texarkana, Shreveport, Alexandria, and Lake Charles are not involved in this proceeding and are on the basis prescribed in *Memphis-Southwestern Investigation*, *supra*. It will be observed that the present rates from Dallas and Fort Worth are higher than from Texarkana and Shreveport and that no increases were necessary to observe the provisions of the fourth section. On

the other hand, it is noted that the rates from points in southern Texas, Beaumont, and Galveston are lower than the rates from intermediate points such as Alexandria and Lake Charles and an increase was necessary from those points in order to observe the Memphis-Southwestern scale from intermediate points. The highest rate to St. Louis on scrap iron at intermediate points is 35 cents, yet respondents propose 38 cents from the entire Texas common-point group. The fourth-section violations could have been removed by establishing a rate of 35 cents from all points in Texas common-point groups.

St. Louis is an important market for scrap iron and is said to receive about 85 per cent of the Texas production. Considerable evidence was introduced to show that scrap iron and junk are low-grade commodities and that the increased rates would substantially reduce, if not entirely prevent, shipments of scrap iron and junk moving from Texas points to St. Louis and other destinations under consideration. In fact, one witness for respondents stated that consideration should be given to a reduction rather than an increase in the rates.

The rate on cotton-tie clippings for over 800 miles under the Memphis-Southwestern scale is 45 cents, which is proposed from Texas group points to St. Louis. The present rate is 36.5 cents. No evidence was introduced respecting these proposed rates. Respondents state the sole purpose of the revision is to remove fourth-section violations in the rates from Texas in compliance with our orders and made no attempt to justify the proposed increased rates.

OYSTER SHELLS

Respondents propose to eliminate whole or crushed oyster shells from the list of fertilizer and fertilizer materials on traffic from Memphis to interior Kansas and Missouri points. Shells were not included in the list of fertilizer materials contained in the commodity description in *Memphis-Southwestern Investigation*, *supra*, but we stated that the lists of commodities upon which rates were prescribed or approved should not be taken as excluding other commodities usually accorded the same basis as articles embraced in those lists. The proposed rates would represent an increase of 7.5 cents in the rates on shells over the rates on fertilizer. We declined to authorize the elimination of shells from the list of articles taking fertilizer rates in *Rates on Clam, Mussel, and Oyster Shells*, 74 I. C. C. 245, and *Fertilizer and Fertilizer Material*, 80 I. C. C. 604. Respondents state that they can not use any broader description from Memphis to the Missouri River on fertilizer than applies

Memphis to intermediate points and observe the fourth-section provisions. Substantially no other justification was advanced. The proposal to exclude oyster shells from the fertilizer list is not justified by the mere statement that intermediate points have had a higher basis, particularly when we have heretofore found that such exclusion was not justified.

We find that the suspended schedules on cotton piece goods, scrap iron, junk, and oyster shells have not been justified. An order will be entered requiring their cancellation.

93 I. C. C.

No. 11130¹

INDIAN PACKING CORPORATION v. DIRECTOR GENERAL, AS AGENT, ANN ARBOR RAILROAD COMPANY, ET AL.

Submitted March 15, 1924. Decided November 3, 1924

1. Upon further hearing in Docket No. 11130, findings in original report, 64 I. C. C. 205, modified.
2. Official classification ratings on peanut butter; butter, sugar or corn sirup and sugar combined; comb or strained honey; honey and sugar mixtures; olive oil; ground spices; and vinegar, in glass, packed in barrels or boxes; in less than carloads, found not unreasonable.
3. Official classification ratings on various other food products, in glass, packed in barrels or boxes, in less than carloads, found unreasonable to the extent that they are higher than the first numbered class above the less-than-carload ratings applicable to the same articles when in metal cans, packed in barrels or boxes.

Walter E. McCornack for Indian Packing Corporation; *Joseph C. Colquitt* for National Food Packers Traffic Association; and *Walter E. McCornack* and *J. G. Jennings* for Glass Container Association of America.

Frank W. Smith for official classification committee; *Royal McKenna* for Director General of Railroads; and *Parker McColleston* for defendants.

REPORT OF THE COMMISSION

BY THE COMMISSION:

Exceptions were filed by the parties to the proposed report of the examiners and oral argument has been had. Our conclusions differ somewhat from those recommended by the examiners.

Complainants, corporations and associations of packers of food products and manufacturers of glass containers, with plants and warehouses located at a number of points throughout territory governed by official classification allege that the existing official classification less-than-carload ratings applicable on food products in glass containers, packed in barrels or boxes, as provided in consoli-

¹ This report also embraces No. 13866, National Food Packers Traffic Association et al. v. Baltimore & Ohio Railroad Company et al.; and No. 13866 (Sub-No. 1), Glass Container Association of America v. Same.

dated freight classification No. 2, official classification No. 46, Agent F. W. Smith's I. C. C. O. C. No. 46, as set forth in the complaints, are unjust and unreasonable.

The complaint in Docket No. 11130 alleged a violation of section 3 of the act, but this allegation was withdrawn at the original hearing. In that docket we are asked to require defendants to publish and apply as maxima in the future to the transportation of sliced drier beef in glass the same rating as that applied to the same commodity when in metal, and to award reparation. In Dockets Nos. 13866 and 13866 (Sub-No. 1) we are asked to require defendants to publish and apply as maxima in the future to the transportation of various food products in glass packed in barrels or boxes, in less-than-carload quantities, the classification ratings set forth in the complaints which appear in the appendix hereto, under the caption "Ratings prayed for." The ratings hereinafter referred to are the less-than-carload ratings in official classification except as otherwise indicated.

In the original report in No. 11130, 64 I. C. C. 205, we found the second-class rating on sliced dried beef, in glass, unreasonable to the extent that it exceeded third class, and awarded reparation. On petition of defendants the case was reopened for further hearing and the effective date of the order was indefinitely postponed. As the issues in Dockets Nos. 13866 and 13866 (Sub-No. 1) are the same in principle as those in No. 11130, the cases were heard together, and will be disposed of in one report.

We are here asked to require reductions in the ratings on sliced dried beef, certain kinds of butter, fish, canned or preserved fruit, fruit butter, crushed fruit, fruit jam, fruit jelly or fruit pulp, olives, honey, honey and sugar mixtures, jams, jellies, or preserves, corn-sirup jelly, mince meat, olive oil, pickles, sauces, spices, and on vinegar, in glass, packed in barrels or boxes, more fully described in the appendix, and hereinafter referred to as food products. The ratings on the kinds of butter referred to, on vinegar, and on sliced dried beef are now second class, and third-class ratings are asked for except on sliced dried beef, upon which rule 26 rating is sought. First-class rating is applicable on the other commodities, and second-class, third-class, or R-26 ratings are prayed. R-26 rates are on a basis 20 per cent less than third class, subject to the fourth-class rate as a minimum.

Food products in glass containers compete with the same articles in metal containers and in all instances where the classification provides a rating on these food products when shipped in metal cans packed in barrels or boxes, complainants ask for the same rating on shipments in glass packed in barrels or boxes. The relationship be-

tween the ratings on these articles in glass and in metal containers was the issue principally stressed in the conduct of these proceedings. The classification carries no rating for vinegar in metal cans, and the third-class rating applicable on vinegar in bulk in barrels is sought.

Rule 5, section 6-b, of the classification provides:

When the term "packed" is used in package specifications it means that the article for which the "packed" specification is provided must be protected by or with partitions, wrappers, excelsior, straw or other packing material that will afford adequate protection against breakage or damage.

When food products in glass are prepared for shipment each container is placed in an individual compartment, separated by partitions of fiber board. In addition to this, corrugated fiber-board liners are generally placed on the sides, top, and bottom of the outer container, thus giving more protection to the inner containers. Filled metal containers are placed in the outer container without liners or interior separating partitions.

The commodities here considered number about 39 but some of them are grouped so that they are contained in 18 classification items. They will therefore be referred to as items. Fourteen of the items are rated first class, and four are rated second class. Five second-class, seven third-class, and six R-26 ratings are asked for. In accordance with the usual practice the same ratings are applied on these commodities in carloads whether in glass or metal containers, except that honey and honey-and-sugar mixture are rated third class, in glass, and fourth class in metal cans. This practice is explained by the defendants to be due, in a measure, to the relatively smaller hazard in handling carload than in handling less-than-carload shipments. The spreads between the carload and less-than-carload ratings are from three to six classes.

In official classification, commodities in glass are generally rated first class in less-than-carload quantities. The record shows that of 288 ratings in the classification of commodities in glass, 264 are rated first class or higher, 17 second class, and 7 third class. Of the 288 items, 223 are also given ratings in tin, of which only 35 are rated first class or higher, 104 are rated second class, 2 R-25 class, 60 third class, 19 R-26 class, and 3 fourth class. In the classification 102 are rated first class in glass and second class in metal, a spread of one class. In 187 instances the rating for articles in glass is higher than for the same commodity in metal. A few articles, such as drugs and medicines, are rated alike whether in glass or metal. Of the items in issue, nine are rated one class lower in both southern and western classifications than in official classification. Two items are rated two classes lower and one three

classes lower in western classification. Ratings are generally higher in official classification than in southern and western classifications.

Complainants contend that food products in glass, in less than carloads, are not given the ratings to which they are properly entitled under the present conditions. They urge that the present ratings are relics of the past, and do not reflect the great improvements in both the containers and the packing of recent years. The original official classification No. 1, issued in 1887, provided by rule that articles in glass would be rated first class in less-than-carload quantities and third class when in carloads, a spread of two classes. Most of the articles are now rated first class in less than carloads and fifth class in carloads, a spread of six classes. At that time both the containers and the packing were far below the present standard. The fiber box was developed long after the first-class rating was established.

Complainants show in one of their many comparisons that food products are rated the same as various articles of an undesirable and inherently dangerous nature from a transportation standpoint, which are shipped in glass containers, and which are generally of a higher value, such as acids, inflammable liquids, poisonous articles, drugs, and chemicals. The latter articles are also subject to very stringent requirements as to packing, marking, and loading. Forty of the most hazardous articles named are rated first class, and some are rated lower. Drugs and medicines, n. o. i. b. n., are rated first class, in less than carloads, and third class, in carloads, both in glass and in metal cans, packed in barrels or boxes, in all three classifications, except that "chemicals" are rated second class in less than carloads and fourth class in carloads in official classification, when in metal cans. Complainants insist that, if these articles are properly rated first class, food products should be given a lower rating.

In official classification, candy or confectionery n. o. i. b. n., cheese, and ground mustard or mustard meal, all take the second-class rating in less than carloads, whether in glass or metal containers; and the ratings on candy or confectionery and cheese, in less than carloads, are only one class higher than the carload ratings. Perishable fruits and vegetables, which are shipped in comparatively inferior packages, require special equipment, are given expedited service, and result in relatively large loss and damage claims, are rated the same as or lower than food products in glass.

Complainants call attention to the spread between the carload and less-than-carload ratings on all articles in barrels or boxes for which the carload ratings provided are subject to minimum weights

of 30,000 or 36,000 pounds, as are food products in glass. Of all the articles in the classification subject to a minimum of 30,000 pounds when in carloads, 71.33 per cent, are rated third or second class, in less than carloads; and of those subject to a minimum of 36,000 pounds, in carloads, 87.69 per cent are rated third, R-26, or fourth class when in less-than-carload quantities.

A comparison of the rates applicable on less-than-carload shipments of food products in glass with those on the same commodities when in metal cans, from Boston, Mass., New York, N. Y., Pittsburgh, Pa., Chicago, Ill., and St. Louis, Mo., to points in territory governed by official classification 25 to 300 miles distant shows numerous instances in which the difference in favor of the metal container is from 45 to 95 per cent.

The tare weight of goods in glass is generally in excess of the net weight of the contents, and the gross shipping weights and the revenues of the carriers on food products in glass are far in excess of the respective weights and revenues on the same net quantity of food products when in metal.

In the other classifications a number of articles are rated the same in glass as in metal; and there are numerous exceptions to the classification under which food products in glass are placed on a lower basis than in the governing classification. Commodity rates are published between points subject to official classification, on the one hand, and points subject to western and southern classifications, on the other, placing goods in glass and in metal containers in less than carloads generally on the same level. Exceptions to the governing classifications, as well as commodity rates are usually established only when there is a considerable volume of movement in particular channels.

Defendants take the position that we are here called upon to determine with what articles the few commodities named in the complaints when in glass should be grouped for rate-making purposes. They submit that with but few exceptions first class is the general classification basis for articles in glass; that where the official classification provides ratings for the same articles both in glass and metal containers the ratings for the articles in glass are generally higher than for the same articles in metal; and that consistent classification practice as well as the less favorable character of the glass container, as compared with metal, from the standpoint of certain elements of classification indicate the propriety of the present ratings and spreads.

The following table compiled from exhibits shows the average weights per cubic foot, and the average value per pound, of the articles here under consideration, in glass and in metal:

Commodity	Weight per cubic foot		Value per pound	
	In glass	In metal	In glass	In metal
	<i>Pounds</i>	<i>Pounds</i>	<i>Cents</i>	<i>Cents</i>
Butter, peanut.....	37	37.70	11.67	10.33
Butter, sugar or corn sirup and sugar combined.....				
Fish, cooked, pickled or preserved.....	33.76	39.50	17.56	14.70
Fruit, preserved in liquid, or fruit preserves.....	44.73	47.42	10.83	11.05
Olives.....	34.51	40.20	21.33	20.90
Honey and sugar mixtures.....	47.50		9.20	
Honey, comb or strained.....	43.85	57	16.33	15.07
Jams or preserves, other than fruit.....	48.75	49.64	7.50	8.28
Jelly, corn sirup.....	45	56.14	6.61	5.28
Mince meat.....	41.80	45.42	14.43	16.73
Olive oil.....	28.77	44.26	31.85	42.01
Pickles.....	40.13	43.33	14.64	9.76
Sauces, table.....	35.11	44.40	14.76	11.63
Spices.....	19.70	21.90	17.50	27.90
Vinegar.....	31.20		7.02	
Sliced dried beef.....	33.66	27.56	20.16	35.16

The volume of movement in both types of containers is large, but that in metal containers greatly predominates.

The principal difference between the two types of containers, defendants assert, is with respect to the liability to damage in transit. Defendants maintain that glass inner containers are more susceptible to breakage than metal containers, and that breakage of the glass container, when it occurs, results in loss of the material contained therein, in damage to other freight, and in a possible shifting of the remainder of the contents of the package, with further damage, whereas damage to the metal container would probably be confined to a dent, or defacement of the label. In this connection, however, it was testified that one manufacturer discontinued the use of metal cans for fruit jams and fruit butter because of damage thereto in the way of dents, rust, and defaced labels that made them unsalable. It is also to be noted that packages of goods in glass, because so marked, should be expected to receive somewhat more careful handling than less fragile shipments, and that the sealed fiber-box package, which is usual for goods in glass, is not as subject to pilferage as wooden boxes.

Defendants also point out that in southern and western classifications the ratings on articles in glass are higher than when the goods are in other containers, and that no complaint has been made of those ratings. This is true to a certain extent, but the spread is not so great as in official classification. The ratings on articles in glass, as a whole, are generally lower in western and southern classifications than in official.

Viewing the matter solely from a classification standpoint the carriers feel that an approval of the changes proposed by complainants would at once involve all the classification committees in the consideration of applications for changes from innumerable sources. A reasonable disposition of such applications they assert, if adverse to the applicants, would not be satisfactory, and doubtless numerous formal complaints would follow with the prospect of extended litigation. Although admitting that these conditions may be only incidental and inapplicable to the merits of the present case they wish us to have them in mind in forming our conclusions, which they feel will be accepted as precedents and have a definite influence in the subsequent disposition of similar and related questions. The present classification, they insist, reflects established principles in description and rating, and to disturb it by changes as proposed by complainants would, in their judgment, impair those principles to an extent that would be far reaching in classification construction, and also would have disastrous effect upon their revenues.

Shippers call attention to the great improvement in the glass container and the packing material now in use, and show by actual shipping tests that food products in glass are but little more susceptible to damage than those in tin. Carriers admit the improvement in packing, and point to their cooperation in preventing damage in transit because of mutuality of interest. They also concede that the security or desirability of a package from a transportation standpoint may with propriety be considered in fixing the rating on its contents. They urge, however, that glass containers have not been standardized to the same degree as metal containers; that there is a wide range of strengths and weights for glass containers of the same capacity; and that glass containers of any degree of strength or thickness may be used. There is no showing as to the uniformity or standardization of metal containers. Witness for a manufacturer of glass containers testified that the weight of the container has considerable bearing on its strength or weakness and that only containers whose specifications call for the proper content of glass are made, except that they are occasionally made heavier than is really necessary. This witness testified that there was substantially no difference in weight and susceptibility to breakage of a glass in which sliced dried beef is shipped and one containing ketchup, vinegar, or mustard, the weight of the glass being approximately the same for similar capacities. This concern supplies the packing and preserving trade with approximately 10,000 cars of glass containers per year, most of which go to points subject to official classification. Its greatest competition is with tin containers.

Both complainants and defendants made numerous shipping tests between points subject to official classification, and had subsequent laboratory tests made, in order to determine the strength of the package and the susceptibility to breakage or damage of the articles shipped in glass and metal containers, respectively, in actual transportation or comparable handling. The results of the shipping tests show little breakage of or damage to the shipments in glass, and what little damage resulted seems to have been partly caused by rough or careless handling. In the laboratory tests goods in glass and metal, as offered for shipment, were subjected to various strains and shocks until a failure occurred. These tests indicate that, generally speaking, glass containers will not stand as much rough usage as metal and that some glass containers will not stand as much as others, but they also indicate ability on the part of shipments in glass, generally speaking, to sustain, without substantial damage, shocks and strains in excess of those which they might ordinarily be expected to receive in transportation.

Complainants contend that claims for damage now represent less than one-half of 1 per cent of the freight charges paid on the food products. They put in evidence a statement of one of the large railway systems operating between points subject to both official and southern classifications, showing damage to food products in transit on its line, for the six months January to June, 1922, as follows:

	In glass	In metal
Number of claims-----	916	669
Total amount-----	\$2, 468. 39	\$5, 567. 66
Average per claim-----	\$2. 70	\$5. 62

The record shows that one of the largest shippers of goods in glass containers in the country, who is one of the parties to the complaint, shipped during the month of January, 1922, 1,424,884 bottles of vinegar, of pint, quart, and half-gallon size, these being bottles which showed the lowest proportion of glass content as compared to the products, and which defendants' witness considered as fragile, and that only 35 claims, for a total of \$60.55, were filed thereon; that during the same month this company shipped a total of 4,651,531 pounds of food products in glass in less than carloads, and that claims thereon amounted to only 0.74 of 1 per cent of the freight paid on the shipments. The claims of other shippers were somewhat on a parity, the ratio generally being less. These figures do not indicate fragility of the glass container, under actual shipping conditions, to the degree ascribed to it by the defendants.

Defendants submit, among others, a statement of damage claims paid by certain lines operating under the official classification during

the early months of 1922, on shipments of food products in glass as compared with those in metal, as follows:

	In glass		In metal	
	Claims	Amount	Claims	Amount
Michigan Central (six months).....		\$609. 10		\$753. 29
Boston & Maine (one month).....	39	116. 81	54	296. 43
Pennsylvania (East) (one month).....	20	29. 24	6	130. 34
Big Four (one month).....	60	224. 60	44	360. 01
	119	1, 279. 15	104	1, 540. 07

In addition to the evidence hereinbefore referred to, and that relating specifically to the rating on sliced dried beef, which is more fully covered in the previous report, the record contains numerous exhibits and counsel for the parties have filed extensive briefs. It is impracticable to enter into a detailed discussion of all of the points raised by the respective parties but all have been carefully considered.

On the whole the record indicates that, as to many of the elements proper to be considered in the classification of freight, shipments of the food products here considered in glass and in metal containers are upon a substantial parity; as to others, they differ in varying degrees. It does not establish that the ratings on shipments in metal afford a proper measure of the reasonableness *per se* of the ratings on shipments in glass.

It is obvious that the varying shades of difference in classification elements can not be translated into ratings with mathematical accuracy, especially where the number of ratings in the classification is limited. We have said repeatedly that no classification can be so minute as to conform to all the differing varieties and conditions of traffic. We can do no more than exercise our best judgment in an effort to give proper weight to all of the evidence and with due regard to the interests of the shippers, the carriers, and the public generally.

In No. 11130 we prescribed third class as the maximum reasonable rating on sliced dried beef, in glass. Upon consideration of the more comprehensive record now before us we are of the view that this conclusion should be modified to the extent hereinafter indicated.

We are of opinion that certain of the ratings assailed are unreasonable in their relation to the ratings on shipments in metal. This record deals collectively with a number of articles upon which different ratings apply in glass and in metal, respectively, and, as above indicated, is based largely upon the relationship between the two classes of containers. In view of the nature of these proceedings

and of the evidence presented we do not feel warranted in attempting to prescribe maximum reasonable ratings on any of the articles considered.

Upon the whole record, we find that the less-than-carload ratings in official classification applicable to the interstate transportation of peanut butter; butter, sugar, or corn sirup and sugar combined; comb or strained honey; honey and sugar mixtures; olive oil; ground spices; and vinegar, as more fully described in the complaints and in the appendix are not unreasonable; but that the less-than-carload ratings in said classification applicable to the interstate transportation of the other articles complained of, i. e., sliced dried beef; olives; mince meat; pickles n. o. i. b. n.; table sauces n. o. i. b. n.; fish, other than fresh; canned or preserved fruit; fruit butter; crushed fruit; fruit jam; fruit jelly; fruit pulp; edible jams, jellies, or preserves, n. o. i. b. n.; and corn sirup jelly; as more fully described in the complaints and in the appendix to this report, when in glass, packed in barrels or boxes, are and for the future will be unreasonable to the extent that they are or may be higher than the first numbered class above the less-than-carload ratings contemporaneously applicable to the same articles when in metal cans, packed in barrels or boxes. Reparation in No. 11130 is denied. Upon the question of whether or not compliance with this finding should be effected entirely by reductions in the ratings on shipments in glass we express no opinion at this time.

The items carrying ratings on shipments in glass also include shipments in earthenware and it is assumed that this grouping will be continued.

Appropriate orders will be entered.

HALL, *Chairman*, dissenting:

The evidence is almost wholly directed, as the majority concede, to the relationship of the ratings and will not support a finding that ratings on shipments in metal afford any criteria for determining the reasonableness of ratings on shipments in glass. Glass and metal containers, and their contents as well, are in active competition. No undue prejudice was alleged and none is found. The finding is of unreasonableness. If so, what ratings are or would be reasonable? The report, like the record, will be searched in vain for an answer and the order leaves defendants free to increase all of the ratings, provided only that the prescribed relationship between them is observed. Complainants elected to present an issue which is not supported by proof and to devote their proofs to an issue which they did not present. The complaints should be dismissed.

COMMISSIONER Cox joins in this expression.

CAMPBELL, *Commissioner*, dissenting:

The glass container is used almost as extensively as the metal container in the shipment of the commodities here dealt with. The differences in weight per cubic foot and in value per pound of these commodities when in glass and metal containers, respectively, are small, and I am convinced from the evidence that the glass container is no more susceptible to damage than the metal container. The carriers have established numerous commodity rates on these articles when in glass the same as when in metal containers. I would find the assailed ratings unreasonable to the extent that they exceed the contemporaneous ratings on these goods when in metal containers.

COMMISSIONER McCHORD dissents.

APPENDIX

Classification ratings complained of and ratings sought

Commodity description	Present ratings	Ratings prayed for
Butter:		
Peanut (Peanut Paste):		
In glass or earthenware packed in barrels or boxes, L. C. L.....	2	3
Sugar or Corn Syrup and Sugar combined, flavored or not flavored:		
In glass or earthenware packed in barrels or boxes, L. C. L.....	2	3
Fish:		
Other than Fresh:		
Shell Fish, Cooked, Pickled or Preserved, N. O. I. B. N.:		
In glass or earthenware packed in barrels or boxes, L. C. L.....	1	R26
Fish, other than Shell Fish:		
Cooked, Pickled or Preserved, Dried, Dry Salted or Smoked:		
In glass or earthenware packed in barrels or boxes, L. C. L.....	1	R26
Fruit, Other Than Dried, Evaporated or Fresh:		
Canned or Preserved in juice or syrup or in liquid other than brine or alcoholic liquor, Fruit Butter, Crushed Fruit, Fruit Jam, Fruit Jelly or Fruit Pulp:		
In glass or earthenware packed in barrels or boxes, L. C. L.....	1	R26
Olives:		
In glass or earthenware packed in barrels or boxes, L. C. L.....	1	3
Honey and Sugar Mixtures (mixtures of strained honey and invert sugar containing not more than 50% by weight of honey):		
In glass or earthenware packed in barrels or boxes, L. C. L.....	1	2
Honey:		
Comb or strained:		
In glass or earthenware packed in barrels or boxes, L. C. L.....	1	2
Jams, Jellies or Preserves, edible, N. O. I. B. N.:		
In glass or earthenware packed in barrels or boxes, L. C. L.....	1	R26
Jelly, Corn Syrup:		
In glass or earthenware packed in barrels or boxes, L. C. L.....	1	R26
Meats:		
Cooked, Cured or Preserved, with or without vegetable ingredients, N. O. I. B. N.:		
In glass or earthenware packed in barrels or boxes, L. C. L.....	2	R26
Mince Meat:		
In glass or earthenware packed in barrels or boxes, L. C. L.....	1	3
Oils:		
Olive:		
In glass or earthenware packed in barrels or boxes, L. C. L.....	1	2
Pickles, N. O. I. B. N., see Note:		
In glass or earthenware packed in barrels or boxes, L. C. L.....	1	3
NOTE.—Ratings apply on Fruits, Nuts, or Vegetables, pickled in brine or vinegar, N. O. I. B. N., but will not apply on Fruits, Nuts, or Vegetables in syrup.		
Sauces, Table, N. O. I. B. N., including Catsup, prepared Horseradish, prepared Mustard, Pepper Sauce or Salad Dressing:		
In glass or earthenware packed in barrels or boxes, L. C. L.....	1	3
Spices:		
Allspice (Pimento), Capsicum (Cayenne Pepper), Chili Peppers, Cinnamon, Cassia, Cloves, Clove Stems, Nutmegs, Paprika or Pepper:		
Ground:		
In glass or earthenware packed in barrels or boxes, L. C. L.....	1	2
Spices, N. O. I. B. N.:		
Ground:		
In glass or earthenware packed in barrels or boxes, L. C. L.....	1	2
Vinegar:		
In glass or earthenware packed in barrels or boxes, L. C. L.....	2	3

INVESTIGATION AND SUSPENSION DOCKET NO. 1766¹

INTERMEDIATE ROUTING VIA NORTH DAKOTA JUNCTIONS ON TRANSCONTINENTAL TRAFFIC

Submitted July 31, 1924. Decided November 4, 1924

1. On further hearing of *Intermediate Routing*, 81 I. C. C. 272, restriction by Great Northern of routing of corn, in carloads, from defined territory in South Dakota over its own lines from Aberdeen, S. Dak., to Montana, Idaho, Washington, and Oregon destinations found not justified. Applicable tariff items ordered canceled. Former report modified accordingly.
2. Carload shipments of corn from defined territory in South Dakota to certain western destinations, principally in the State of Washington, found to have been overcharged. Reparation awarded.

Stanley B. Houck for protestants in No. 1766 and for complainants and defendant Midland Continental Railroad in Nos. 14946 and 15031.

R. D. Lytle for North Pacific Millers' Association, Tacoma, Wash., intervener in Nos. 14946 and 15031.

R. J. Hagman for respondent Great Northern Railway Company in No. 1766 and with *F. G. Dorety*, *D. F. Lyons*, *B. W. Scandrett*, *Henry Blakely*, and *J. N. Davis* for defendants in Nos. 14946 and 15031.

REPORT OF THE COMMISSION ON FURTHER HEARING

BY THE COMMISSION:

Exceptions were filed by defendants to the report proposed by the examiners. A brief in support of the report was filed by the Midland Continental.

This is a further hearing of that part of *Intermediate Routing*, 81 I. C. C. 272, decided July 7, 1923, wherein a proposed restriction by the Great Northern of the routing of corn, in carloads from defined territory in South Dakota to Montana, Idaho, Washington, and Oregon destinations was approved by the commission. With it has been consolidated the record in Dockets Nos. 14946 and 15031, in which the complainants seek reparation from the Chicago, Milwaukee & St. Paul, the Chicago & North Western,

¹ This report embraces also No. 14946, *Vye Grain Company v. Chicago, Milwaukee & St. Paul Railway Company et al.*, and No. 15031, *W. P. Devereaux Grain Company v. Same*. 93 I. C. C.

the Great Northern, the Northern Pacific, the Minneapolis, St. Paul & Sault Ste. Marie, and the Midland Continental, on account of alleged undercharges collected on certain carload shipments of corn made between October 1, 1922, and June 25, 1923, from the same territory of origin to western destinations principally in the State of Washington. Charges were assessed on the basis of a commodity rate of 64 cents, which is alleged to have been illegal, unreasonable, and otherwise unlawful to the extent that it exceeded 59 cents. Just and reasonable rates for the future are also sought. To some destinations charges included arbitraries over the basing point, but these are not in issue. Rates are stated in cents per 100 pounds.

In its petition for further hearing in No. 1766 the petitioner, Midland Continental, alleges that, because the record was incomplete in some respects and erroneous in others, our conclusions were incorrect and at variance with the finding in *Routing via Midland Continental R. R.*, 78 I. C. C. 328. The record as supplemented by the further hearing is now before us. The findings herein also will have application to the issues raised by the complaints in Nos. 14946 and 15031.

By schedules filed to become effective March 7 and April 16, 1923, the Great Northern proposed to restrict to its own lines beyond Aberdeen, S. Dak., the application of a 59-cent rate on corn from stations in South Dakota on the Chicago, Milwaukee & St. Paul and the Chicago & North Western between Yankton and Aberdeen and west from Huron to the Missouri River and beyond as far as Belvidere on the former to the destination territory hereinbefore mentioned. The originating carriers will be referred to as the Milwaukee and the North Western, respectively. These South Dakota points are in transcontinental Group F territory, from which a 64-cent rate applies westbound with back haul via Minneapolis or St. Paul, Minn., and milling in transit thereat. The 59-cent rate from this limited origin territory, it is said, was intended for direct movement through western gateways, and not via the Twin Cities and was not a concession by the Great Northern alone, as stated in the former report, but applied over various routes.

The Midland Continental and complainants in Nos. 14946 and 15031 contend primarily that the applicable tariffs authorized the use of the 59-cent rate via Aberdeen over the Milwaukee to Edgeley, N. Dak.; Midland Continental thence to Wimbledon, N. Dak.; Minneapolis, St. Paul & Sault Ste. Marie thence to Minot, N. Dak.; and Great Northern beyond. They also insist that the wording of the applicable item, quoted below, excludes the Great Northern's branch from Aberdeen to Yarmouth, Minn. The distance from

Aberdeen to Minot over the former route, comprising three additional lines, is 281.7 miles as against 409.4 miles over the Great Northern, or an out-of line haul by the latter of 127.7 miles. This excess, the Great Northern urges, is negligible on a transcontinental movement. The Midland Continental requests that the route over its line be kept open at the 59-cent rate. Divisions between the carriers comprising this route have never been agreed upon.

The tariff provision in question is item 3793 of supplement 20 to Agent Countiss's westbound tariff I. C. C. No. 1102 and item 6723 of supplement 21 to I. C. C. No. 1103. Reissues are I. C. C. Nos. 1118 and 1119. The item originally became effective July 1, 1922, and as since amended provides in I. C. C. No. 1118 that the rate shall apply—

Via direct gateways shown on pages 92 to 96, inclusive, except that rates named will not apply on shipments passing en route through points located east of origin territory in Note 3 below. See Notes 5 and 6 below.

Note 3 embraces the South Dakota territory of origin before described. Points east of this 59-cent territory and south of the Great Northern's lines from Aberdeen through Rutland, N. Dak., to Yarmouth take the 64-cent rate, and the purpose of the exception in the above item, in preventing the movement of the traffic through higher rated points, is to avoid violation of the fourth section. Note 5, while an exception to the general application of the item, merely authorizes certain routes additional to those specified on pages 92 to 96, inclusive, and does not restrict the application of any routes otherwise open.

Note 6 in both tariffs, which was permitted to go into effect by our decision in *Intermediate Routing*, *supra*, reads:

In connection with Great Northern R'y rate from points on Chicago, Milwaukee & St. Paul R'y and Chicago and North Western R'y will apply only via Aberdeen, S. D., and Great Northern R'y.

This note became effective July 25, 1923, and therefore has no bearing upon the applicable rates or routes prior to that date. From and after its effective date this note is restrictive of routes through gateway 2, on page 92, and the additional routes specifically provided by note 5 when the movement to destination is over the Great Northern.

On page 89 of I. C. C. 1102 and on page 92 of I. C. C. 1118, referred to by the items under consideration, under the heading of "Key to Western Gateways" is found the following:

Unless otherwise specifically provided, the rates established herein will only apply * * * via the Gateways indicated by the numbers specifically shown opposite points of destination on (certain pages named therein). [Parenthesis ours.]

No.	Via—	In connection with—	Thence—
2	Junction points with the Great Northern R'y. in Minnesota, Wisconsin, North Dakota, South Dakota, or Iowa. * * * *	Great Northern R'y.----- * * *	Great Northern R'y. * * *
3	Junction points with the Northern Pacific R'y in Minnesota, North Dakota, or Wisconsin.	Northern Pacific R'y.-----	Northern Pacific R'y.

Much of the controversy centers around the effect to be accorded the expression "direct gateways" contained in the item. Respondent Great Northern and defendants other than the Midland Continental and the Soo Line contend that, properly construed, it does not authorize the Milwaukee, for example, to deliver a shipment to the Midland Continental to be transferred to the Northern Pacific for transportation to a destination on the latter's line; in other words, that the traffic must move from the originating line to the delivering line without the interposition of an intermediate carrier. Protestant Midland Continental and complainants, on the other hand, insist that the term has to do primarily with routes resulting from the use of the gateways. In Funk & Wagnall's New Standard Dictionary the word "direct" is defined as:

1. Having or being the straightest course in a given instance; being on a straight line; hence, also shortest; nearest; as, the direct route.

2. Of a character or relation like that of straightness of course.

Specif.: 1. Free from intervening agencies or conditions; hence, characterized by immediateness of relation or of action; not mediate * * *

Protestant Midland Continental and complainants point out that from this territory the route in connection with the Midland Continental is more direct than the route of either the Northern Pacific or the Great Northern through North Dakota or South Dakota junctions. Respondent Great Northern and defendants admit that the term is not defined in the tariffs. It is apparent that its true meaning as used in the item is by no means free from doubt. If it had been the intention to restrict the routing provisions of the tariff so as to exclude the Midland Continental or other intermediate carriers, provision should have been made therefor in clear and unequivocal language. *Baker-Reid Lumber Co. v. B. & O. R. R. Co.*, 74 I. C. C. 489, 490; *Routing on Grain and Grain Products*, 81 I. C. C. 725, 727. Defendants further in this connection stress note 1 on page 23 of I. C. C. 1102, reissued as page 23 of I. C. C. 1118, which, so far as pertinent, provides:

Rates authorized from points located on the Chicago, Milwaukee & St. Paul Railway Company to points located on or reached by the Chicago, Milwaukee

& St. Paul Railway Company in connection with established routes through its Western Junctions will apply only via the Chicago, Milwaukee & St. Paul Railway Company direct, or via the Chicago, Milwaukee & St. Paul Railway Company in connection with established routes named herein, via Bellingham, Maple Valley, Maytown, Seattle, Spokane, Tacoma, Wash., Plummer, Idaho, or Vancouver, B. C., except * * *.

With this note as a premise, it is urged that none of the gateways named in the key to western gateways permits routing over the Midland Continental in connection with shipments moving from points on the Milwaukee to competitive stations on the Milwaukee and Northern Pacific. But the note follows a provision for the general application of Group F rates from most South Dakota points of origin, and must be construed as applicable only in connection with rates published to apply from Group F. The 59-cent rate in issue is found in section 3 of the tariff under "special commodity rates." It is not published to apply from Group F but applies only from specific points. Neither the item in which it is published nor the key to western gateways contains a reference to the item on page 23 and the tariff affords no basis for holding that the specific provisions of the rate item are subject to or are restricted by the note. This view of the matter is confirmed by note found on page 1 under the heading "Application of this Tariff" stating "For special commodity rates applying from and to specific points see section 3."

In *Routing via Midland Continental R. R.*, *supra*, we declined to sanction a proposal of the Northern Pacific to eliminate the Midland Continental as an intermediate carrier from Group F points to destinations in Montana on the former's line. The reasons are fully set out in the report and need not be repeated here. Further consideration of what the Great Northern proposed to accomplish through the operation of note 6 leads to the conclusion that the same reasoning is applicable under the circumstances here presented. The Great Northern does not originate this traffic and the considerations for keeping open routes over the Midland Continental found impressive in *Routing via Midland Continental R. R.*, *supra*, are shown by the present record to be as persuasive as they were there.

We find that the publication for the Great Northern of note 6 in the tariffs above named has not been justified and should be canceled. The former report and order will be modified accordingly.

We further find that the shipments were overcharged to the extent that the charges collected exceeded those which would have accrued at the base rate of 59 cents herein found applicable; that complainants, corporations buying and selling grain with headquarters at Minneapolis, made the shipments as described and paid and bore the charges herein found inapplicable; that they have been damaged

thereby in the amount of the difference between the charges paid and those that would have accrued at the rate herein found applicable; and that they are entitled to reparation, with interest. Complainants should comply with Rule V of the Rules of Practice.

HALL, *Chairman*, dissenting:

Despite some inaccuracies in discussion I adhere to our original conclusion as to the effect of note 6. But, passing that, the question is not, as the majority seem to think, one of opening or keeping open a route which includes the Midland Continental. That has been open all the time from "defined territory" in South Dakota, i. e., a few stations on the Milwaukee and the North Western, just as it has been and is open from other stations in South Dakota not on those two lines. Some of these other stations lie much nearer to Aberdeen than do the stations in defined territory. All have taken and still take the Group F rate of 64 cents on shipments which move over the Midland Continental. The effect of this report and order will be to make effective for the future, and retroactively through reparation, on shipments made in the past from defined territory the lower 59-cent rate which the carriers established to draw traffic to their own lines, but will not make that lower rate effective from other South Dakota stations in Group F, whether nearer to or farther from Aberdeen than are these stations in defined territory. The result will be a prejudice, and seemingly an undue prejudice, to the other South Dakota stations.

No. 14814

UNITED COMMERCIAL COMPANY v. SOUTHERN PACIFIC COMPANY ET AL.

Submitted July 22, 1924. Decided October 31, 1924

Defendants found not liable in damages in connection with complainant's order for a diversion of shipments, its subsequent cancellation thereof, and defendants' later forwarding of the shipments from the point of interception to original billed destination instead of holding them for further orders from complainant. Complaint dismissed.

Gwynn H. Baker for complainant.

J. V. Lyle and *M. A. Cummings* for defendants.

REPORT OF THE COMMISSION

DIVISION 3, COMMISSIONERS HALL, CAMPBELL, AND COX

BY DIVISION 3:

Exceptions were filed by the complainant to the report proposed by the examiner.

The complainant is F. A. Botsford, engaged at San Francisco, Calif., under the trade name of United Commercial Company, in the purchase, sale, and shipment of merchandise. By this complaint he alleges that, owing to the failure of defendants to follow diversion instructions, the charges assessed on two shipments of steel rails, with angles, in carloads, from Boulder, Colo., to Wilmington, Calif. (Los Angeles Harbor), on May 4, 1920, were unreasonable. Reparation is prayed.

On May 4, 1920, complainant shipped six carloads of steel rails and angles from Boulder to Wilmington, routing them over the Union Pacific to Ogden, Utah, the Oregon Short Line thence to Salt Lake City, Utah, and the Los Angeles & Salt Lake beyond. The shipments were consigned to the steamer *Kaseeka*, in Los Angeles Harbor, for export to the Philippine Islands. The export rate applicable over this route was 50 cents per 100 pounds, which included transfer of the freight from the car to ship side. No diversion in transit was permitted under this rate. On May 10, because the sailing of the *Kaseeka* had been canceled, complainant instructed the carrier to divert the six cars to Westwood Junction, Calif., over

the Southern Pacific, which, under those instructions, would have received the shipments at Ogden or Salt Lake City. Four of the cars had already passed those points, and were permitted to proceed to Wilmington over the Los Angeles & Salt Lake, as originally billed. The charges on them, based on the 50-cent export rate, are not here in dispute. The other two cars were diverted, one at Ogden and the other at Salt Lake City, to Westwood Junction, over the Southern Pacific. On May 13, when complainant learned that the other four cars had passed Ogden and Salt Lake City, and could not be diverted to Westwood Junction, he directed the defendants to cancel the diversion of the two cars to Westwood Junction, and allow them to proceed to destination as originally billed. Before this request could be complied with, the two cars had reached Imlay, Nev., on the Southern Pacific, 398 miles west of Ogden. The Southern Pacific, on receipt of advice to cancel the diversion of these cars to Westwood Junction, did so, and rediverted the cars to Wilmington over its line. Charges were collected on the basis of \$8.80 per short ton from Boulder to Salt Lake City, \$12.80 per long ton from Salt Lake City to Stockton, and 34.5 cents per 100 pounds from Stockton to Wilmington, equivalent to a total of about \$1.35 per 100 pounds, plus \$2 for the first diversion, \$5 for the second, and 60 cents per ton for transfer from car to ship side, a total of \$3,125.69 for the two cars.

At the hearing it developed that charges were not collected on the correct basis, which was \$16.30 per gross ton on the rails, and \$16.30 per net ton on the fastenings, from Boulder to Fernley, Nev., a point to which Imlay is directly intermediate, 54 cents per 100 pounds thence to Roseville, Calif., and 34.5 cents from Roseville to Los Angeles. Charges on this basis are higher than those applied on the shipments. The shipments were undercharged.

The contention is that the charge should not have exceeded the export rate of 50 cents per 100 pounds, including transfer of the freight from car to ship side, which rate was applicable over both the route of movement and the route traversed by the other four cars, but which, as stated, permitted no diversion in transit. The claim is for \$2,047.51.

Complainant states that his representative, on May 10, instructed the Union Pacific, by telephone, to divert the six cars to Westwood Junction, provided that all six could be diverted; and contends that the Union Pacific, when it found, on May 13, that four of the cars had passed Ogden and Salt Lake City, and could not be diverted, should have treated the order for diversion of the other two cars as having been canceled. He submits an affidavit of his representative as evidence of the alleged instructions. The representative of the

Union Pacific by whom the telephone message was received denied, at the hearing, that any such conditional instructions were given. He testified that the Union Pacific was not advised by complainant of his desire to treat the six cars as a unit until complainant was informed on May 13 that the four cars had passed Ogden and Salt Lake City on their way to Wilmington over the Los Angeles & Salt Lake, as originally billed. Complainant's penciled memorandum of May 10 to the Union Pacific agent, upon his call at the latter's office on that date, directed the diversion of the six cars without any qualifying condition and bears the notation "B/Ls attached to be returned as fast as diverted." Complainant's letter of May 10 to the agent of the Union Pacific is of the same import. Neither the original nor a copy of complainant's order for cancellation of the diversion of the two cars to Westwood Junction on May 13 appears of record. There is therefore no documentary evidence as to whether there was included therein an instruction to redivert the cars to Wilmington. A reference to the order for cancellation is contained in the following letter of May 13 from the assistant traffic manager of the Union Pacific to complainant:

Per your verbal request we are returning to you U. P. Boulder, Colo., ladings Nos. 8105 and 8106, and in this connection wish to state that we have placed diversion instructions with our Freight Claim Agent and will attempt to cancel these instructions and allow cars to proceed to original destination. In view of the fact that cars were out May 4 and diversion has been in for three days it may be impossible for us to make the cancellation and protect the through rate.

We, however, will do the best we can to comply with your request.

Complainant testifies that the verbal request referred to in the above letter was for cancellation of the diversion and sending of the cars to original billed destination, provided that the through rate of 50 cents per 100 pounds could be protected. The Union Pacific states that complainant insisted that these cars should be rediverted to Wilmington, and at the export rate of 50 cents; further, that complainant was informed that the protection of the through rate was very doubtful, but that the best possible would be done in that respect. Following this conversation the following letter of May 13 was sent by the Union Pacific to the Southern Pacific, confirming a telephone conversation concerning these two cars:

We placed instructions with Omaha and Salt Lake to divert these cars to the Fruit Growers Supply Company, Westwood Junction, Calif.

It now develops that the United Commercial Company desire to have these cars go forward as originally billed.

We are placing this diversion with your company to take necessary precaution, and in case these cars are delivered to your line, that you will see that cars are diverted to Los Angeles, via the Southern Pacific, providing the through rate will be protected.

The Southern Pacific concedes that these cars should not have been forwarded from Imlay to Wilmington over its line unless the through rate could be protected, provided that the telephone instructions on which the cars were forwarded, before receipt of the confirmatory letter, were also conditional in that respect. But it doubts whether the telephone instructions were conditional, and makes reference to a written memorandum of the clerk in the office as follows:

Plant, of the Union Pacific, phoned on May 13th cancelling instructions to divert. Let move as originally billed.

The record can not be accepted as affirmatively establishing that complainant's original instructions were to divert all six or none of these cars to Westwood Junction. An affidavit to that effect, without opportunity for cross-examination of the maker, can not be given more weight than the opposite statements on behalf of the Union Pacific made at the hearing and subject to cross-examination. This being so there is no merit to the complainant's contention that the Union Pacific was automatically advised to cancel the diversion of the other two cars when it found that four had already passed the junction points at which diversion could have been made. The record fails to establish any dereliction on the part of defendants prior to the time that the two cars were intercepted at Imlay, on the Southern Pacific.

A witness for the Union Pacific testified that complainant was insistent that the cars proceed from Imlay on to Wilmington. Complainant states that he would have permitted them to go on to Westwood Junction, to fill an order for some of this material, which he later filled from another source. But if these cars had followed the other four over the Los Angeles & Salt Lake, complainant would apparently have been satisfied and certainly would have had no cause for complaint. If the Southern Pacific, upon receipt of the order for cancellation of the diversion, back hauled the cars from Imlay to Salt Lake City or Ogden and interchanged them there with the Los Angeles & Salt Lake for transportation to Wilmington, as originally billed, complainant would apparently have been equally satisfied. Nor does complainant's statement that he would have sent the cars to Westwood Junction comport with his conception of the facts at the time of drafting of the original complaint, for there he alleges in the following language that he ordered the cars forwarded from the point of interception (Imlay) to Wilmington over the Southern Pacific:

That on receipt of said advice on or about May 13th, complainant advised defendant's aforesaid agent that complainant would be unable to accept any

cars at Westwood Junction, unless all six (6) of the cars were taken there, and in order to minimize the damage which complainant would suffer by reason of defendant's negligence, instructed defendant's agent to divert the two cars mentioned in paragraph VIII hereof, to the original consignee and destination at San Pedro, California, and allow said cars to proceed to such destination via the line of the Southern Pacific Company. * * *

The above allegation was amended by the following:

That on receipt of said advice on or about May 13th complainant instructed defendant's aforesaid agent to cancel the diversion of said two cars mentioned in paragraph VIII hereof, and allow same to proceed to original destination; that defendant's agent thereafter, gave no advice or information to complainant whether said instructions had been complied with, or not; that said cars moved to destination, Wilmington, California, via the line of the Southern Pacific Company; * * *

Complainant does not charge the Union Pacific with delay in not intercepting the first four cars for diversion at Ogden or Salt Lake City to Westwood Junction, or for not intercepting the other two for cancellation of the diversion order before they reached Imlay. The cancellation of the order for diversion of the latter two had to be effected before they reached Ogden or Salt Lake City, if at all. After they passed those junction points with the Southern Pacific the diversion was effected, and any further change in their destination was a second diversion rather than a cancellation of the first one. It was therefore impracticable to apply the export rate of 50 cents per 100 pounds, in connection with which not even a first diversion was permitted. Inasmuch as cars reached Imlay without any negligence chargeable to defendants, complainant could not thereafter have given any instructions that would have warranted the application of the 50-cent export rate. If the cars had been finally ordered to Westwood Junction the charge would apparently have been the through rate, if one was published, plus \$2 for the diversion. Nor could the through domestic rate of 94 cents, applicable on iron and steel articles generally, be applied, since it permitted only one diversion in transit. The only rate available, therefore, was the combination of rates over the route of movement.

Complainant contends that, irrespective of the alleged unauthorized diversion of the shipments from Imlay to Wilmington, the charge of approximately \$1.355 per hundred pounds collected on these shipments was unreasonable by comparison (1) with the export rate of 50 cents; (2) with a domestic rate of \$21 per gross ton on the rails and 94 cents per hundred pounds on the angles from Denver, Minnequa, and Pueblo, Colo., to Wilmington, which, under a rule 77 provision in the tariff, would have been published from Boulder, directly intermediate, upon request, and which applied from as far east as the Missouri River; (3) and with a rate of \$13.80 per long

ton from Denver, Minnequa, and Pueblo to East Ely, Nev. These comparisons are not forceful under the facts of this case. The rates referred to applied on shipments direct to destination or diverted in accordance with the rules of the tariff. If no diversion had been effected these cars would have been given the benefit of the 50-cent export rate. If they had been domestic shipments, with only one diversion, the rate of \$21 per gross ton on rails and 94 cents on angles would have applied. The diversions were made subject to rule 5 of the uniform diversion rules. The tariffs permitted no diversion under export rates, and only one diversion under domestic rates, and imposed the combination of locals to and from the diversion point, plus \$5, in case of a second diversion. There is no showing here that the diversion rules were unreasonable, or that they were not applied according to their terms.

The complaint will be dismissed.

93 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 2220

COAL FROM CHESAPEAKE & OHIO RAILWAY STATIONS
IN WEST VIRGINIA

Submitted September 26, 1924. Decided November 17, 1924

Proposed increased rates on coal from Chesapeake & Ohio Railway stations in West Virginia found not justified. Suspended schedules ordered canceled.

J. S. Patterson for respondent.

A. R. Yarborough for Kanawha Coal Operators Association and Bear Penn Coal Company; *G. K. Mitchell* for Concordia Coal Company, Consolidated Paper Company, Inland Delray Salt Company, L. C. Smith & Company, J. Calbert's Sons, C. H. Reiser & Company, H. A. Dewey, and Nicholas A. Mans, protestants.

E. J. McVann for New River Coal Operators Association.

REPORT OF THE COMMISSION

DIVISION 4, COMMISSIONERS MEYER, EASTMAN, AND POTTER

MEYER, *Commissioner*:

By schedules filed to become effective August 25, 1924, respondent proposed to increase and reduce rates on coal from points on the Gauley branch of the Chesapeake & Ohio to various destinations east and west thereof, as shown in numerous tariff supplements. Upon protest of the Kanawha Coal Operators Association, of Charleston, W. Va., and numerous other protestants, the schedules were suspended until December 23, 1924. The New River Operators Association appeared in support of the suspended schedules. Rates will be stated in cents per net ton.

The Gauley branch extends in a northerly direction from Gauley, W. Va., the junction point with the main east-and-west line of the Chesapeake & Ohio, to Belva, W. Va., where it branches, one fork extending northeast to Greendale and another northwest to Bentre, W. Va. Belva, Bentre, and Greendale are approximately 7, 12, and 14 miles, respectively, from Gauley. The territory served by the Chesapeake & Ohio, Belva and north thereof, is included in the Kanawha district, one of the Inner Crescent group of mines.

The territory south of Belva is in the New River district in the Outer Crescent group.

On eastbound traffic from the Kanawha district the rates are generally 10 cents higher than the rates from the New River district, while on westbound traffic the rates from the Kanawha district range from 5 to 40 cents lower than the rates from the New River district, except to a few points to which the rates are the same from both districts. The rate relationship between these two districts had its origin about 20 years ago. Westbound traffic from the mines on the Chesapeake & Ohio north of Belva, on which the Kanawha district rates are applied, must pass through the higher rated or New River district south thereof, which results in rates in contravention of the provisions of the fourth section of the act. These departures were protected by appropriate fourth-section applications. At the hearing on these applications, operators of mines both north and south of Belva intervened and presented evidence in support of the application for relief. The applicant's only justification for authority to continue to charge lower rates from points on the Gauley branch than from the New River district on westbound traffic was based upon the long continuance of the adjustment and its desire to avoid disturbance of business relations that had developed as a result of the rate adjustment. We did not consider that the reasons assigned constituted such a special case as contemplated by the law and fourth-section relief was accordingly denied. *Coal and Coke from C. & O. Points*, 89 I. C. C. 638. In compliance with our order therein the applicants elected to remove the fourth-section departure by advancing the rates from the more distant points, Belva and north thereof, to the level of the New River or intermediate basis of rates, at the same time reducing the rates eastbound from the more distant points to the New River basis, making the rates from all points on the Gauley branch the same on both eastbound and westbound traffic, and the protested schedules herein were filed with that end in view. While the proposed adjustment would have the effect of removing the fourth-section departures found not justified, it would at the same time result in an average increase of about 20 cents per ton on coal from Belva and points north thereof on westbound traffic, and an approximate reduction of 10 cents per ton on eastbound traffic. No change is proposed from points south of Belva. The present and proposed rates both east and west bound, from and to representative points, are shown in the following table for bituminous coal, in carloads, from C. & O. Ry. stations Belva, Greendale, and Bintree, W. Va., rates being in cents per ton of 2,000 pounds.

To—	Present	Proposed	Advance	Reduction
	<i>Cents</i>	<i>Cents</i>	<i>Cents</i>	<i>Cents</i>
Chicago, Ill.-----	309	329	20	-----
Toledo, Ohio.-----	239	264	25	-----
Toledo Docks, Ohio, for movement by water beyond-----	191	206	15	-----
Cincinnati, Ohio.-----	189	199	10	-----
Kalamazoo, Mich.-----	310	335	25	-----
Washington, D. C.-----	338	313	-----	25
Richmond, Va.-----	275	265	-----	10
Newport News, Va., for transshipment by water.-----	262	252	-----	10
Atlanta, Ga.-----	381	371	-----	10
Raleigh, N. C.-----	330	320	-----	10

The Swiss extension of the New York Central lines is the dividing line between the New River district and the Kanawha district group of origin points under the present adjustment of rates. The Swiss and Belva rates via the New York Central to Chicago, Toledo, Toledo Docks, and Cincinnati, are the same as the present rates from Chesapeake & Ohio stations, Belva and north thereof. To Kalamazoo the rate is \$3.09 per ton. No change is proposed in the New York Central rates.

The mines in western Pennsylvania, West Virginia, Virginia, and Kentucky are, for convenience, divided into two general groups known as the Inner Crescent and the Outer Crescent, the Inner Crescent being located nearer to, and having more favorable rates to central freight association and western points, while the Outer Crescent group has more favorable rates to eastern points. The Kanawha district is a part of the Inner Crescent group, while the New River district is located in the Outer Crescent. *Bituminous Coal to C. F. A. Territory*, 46 I. C. C. 66.

Protestants operate mines north of Belva on the Gauley branch of the Chesapeake & Ohio, which affords the only transportation outlet from these mines. The coal produced at their mines is of the same character as the coal produced at all other Inner Crescent mines, and it competes at central territory and western destination points with coal produced at other Inner Crescent mines.

No increase is proposed in rates from these competing mines and it would be necessary for protestants to absorb the proposed increases to continue shipping to the western markets. Protestants assert, therefore, that the proposed rates are unjust, unreasonable, and unduly prejudicial to them and unduly preferential of their competitors located in the Inner Crescent group. They urge that under normal conditions competition in the sale of coal at destinations north of the Ohio River is severe as between their mines and all other mines located within the Inner Crescent group, and that, therefore, the proposed rates would restrict, if not eliminate, their coal from the western market. They assert that all coal produced

from mines, Belva and north thereof, moves to the west, and that under these circumstances the proposed reduction in eastbound rates would not be of any benefit to them. The coal on the Gauley branch is high-volatile coal; that mined on the southern end is of a kind intermediate between high-volatile and low-volatile coal, and is termed midway coal. The coal produced north of Belva has always been marketed at points west, largely in northern Ohio and the Lower Peninsula of Michigan, where it comes into competition with high-volatile coals produced in other parts of the Kanawha and other districts. Several concerns at Detroit and other consuming points intervened in support of the request for suspension, asserting that the proposed rates would curtail the field from which they draw their supplies of fuel, and otherwise embarrass them. The Bear Penn Coal Company of Detroit operates three mines on the Gauley branch north of Belva, owning approximately 5,000 acres of land underlaid with coal. This company states that it has secured contracts from various consumers in western markets which were predicated upon the present long-standing adjustment of rates; that its coal finds sale only in the western market; that if the proposed rates become effective, it probably can not continue operations; and that the proposed increase to western markets would eliminate its coal entirely. The mines south of Belva in the New River district ship their product to the east, and are therefore not interested in the measure of rates to the west, but do not want the rates to the east disturbed. With this situation in mind, protestants say that the respondents could have complied with the fourth-section order by giving to all mines on the Gauley branch the Kanawha district basis of rates on westbound traffic, and the New River basis of rates on eastbound traffic.

Respondent attempts to justify the proposed increases upon the ground that they remove the fourth-section departures above referred to, and that the application of the New River district basis of rates from all points on the Gauley branch would create the least commercial disturbance. The reasonableness of an increased rate can not be established by simply showing that departures from the fourth section are thereby removed, *Iron and Steel Articles from Philadelphia*, 92 I. C. C. 123, or in order not to disturb commercial conditions. Respondent made no effort to show that the proposed rates are reasonable *per se*. On the contrary, witness for respondent admitted that the present Kanawha district rates are just and reasonable as applied on westbound traffic from the mines north of Belva, but contended that the application of the proposed New River district rates from the upper part of the Gauley branch would likewise be just and reasonable.

The record shows that practically no westbound traffic moves from the intermediate points in the New River district. Therefore, respondent's revenue would not be materially affected were the fourth-section departures removed by reducing the rates from the intermediate points to the level of the rates from the Gauley branch points.

We find that the proposed increased rates have not been justified. An order requiring the cancellation of the suspended schedules and discontinuing this proceeding will be entered.

No. 14615¹

W. J. STAHLBERG, DOING BUSINESS AS WINTER'S
METALLIC PAINT COMPANY, v. CHICAGO, MILWAU-
KEE & ST. PAUL RAILWAY COMPANY

Submitted March 29, 1924. Decided October 31, 1924

Rates on ground iron ore, from Neda, Wis., to various interstate destinations found not unreasonable or otherwise unlawful. Complaints dismissed.

C. E. Wampler for complainant.

J. N. Davis and *C. R. Sutherland* for defendants.

REPORT OF THE COMMISSION

DIVISION 3, COMMISSIONERS HALL, CAMPBELL, AND COX

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant, an individual doing business under the trade name of Winter's Metallic Paint Company, manufactures ground iron ore at Neda, Wis., a station on a branch line of the Chicago, Milwaukee & St. Paul, hereinafter called the Milwaukee, about 2 miles from Iron Ridge, Wis., and 49 miles west of Milwaukee, Wis. In a series of complaints he assails the rates on ground iron ore from

¹ This report also embraces No. 14615 (Sub-No. 1), Same v. Chicago, Milwaukee & St. Paul Railway Company et al.; No. 14615 (Sub-No. 2), Same v. Chicago, Milwaukee & St. Paul Railway Company et al.; No. 14615 (Sub-No. 3), Same v. Chicago, Milwaukee & St. Paul Railway Company et al.; No. 14615 (Sub-No. 4), Same v. Chicago, Milwaukee & St. Paul Railway Company et al.; No. 14615 (Sub-No. 5), Same v. Chicago, Milwaukee & St. Paul Railway Company et al.; No. 14615 (Sub-No. 6), Same v. Chicago, Milwaukee & St. Paul Railway Company et al.; and No. 14615 (Sub-No. 7), Same v. Chicago, Milwaukee & St. Paul Railway Company et al.

Neda to various interstate destinations. In Nos. 14615 and 14615 (Sub-No. 1), as amended, he alleges that to Chicago, Bensenville, and East St. Louis, Ill., they were and are unreasonable, unjustly discriminatory, and unduly prejudicial; in Nos. 14615 (Sub-No. 3) and 14615 (Sub-No. 4) that to Dayton, Columbus, and Cleveland, Ohio, Pittsburgh, Pa., and Detroit, Mich., they were and are unreasonable and unjustly discriminatory; and in Nos. 14615 (Sub-No. 2), 14615 (Sub-No. 5), 14615 (Sub-No. 6), and 14615 (Sub-No. 7), that to Kankakee, Ill., Michigan City, Ind., New Orleans, La., San Francisco and Los Angeles, Calif., and other Pacific coast terminals they were and are unreasonable. We are asked to prescribe reasonable and nonprejudicial rates for the future. Except as otherwise indicated, rates will be stated in cents per 100 pounds.

Complainant roasts, grinds, and pulverizes a particular kind of crude iron ore. The resulting product, ground iron ore, is a finely pulverized powder which forms the base of metallic paint. This paint is used chiefly on railroad freight cars.

UNREASONABLENESS

Complainant's evidence in support of the allegation of unreasonableness is extremely meager. Ground iron ore is rated class C in western and sixth class in southern classifications, and sixth class under exceptions to the official classification. The rates of 14 cents to Chicago and Bensenville and 23 cents to East St. Louis, assailed, are equivalent to class D rates. Class D is the basis prescribed by us on ground iron ore from Iron Ridge, Wis., to certain points in western trunk-line territory in *Winters Metallic Paint Co. v. C., M. & St. P. Ry. Co.*, 16 I. C. C., 587. Complainant contends that, based upon the cost of the service, these rates are unduly high by comparison with contemporaneous rates on crude iron ore from Neda of \$1.34 per long ton to Bensenville and \$2.92 per long ton to East St. Louis. Crude iron ore, as its name implies, is iron ore as it is mined, whereas ground iron ore is a manufactured product which when ground in oil becomes paint. The value of crude iron ore is \$3.50 per ton, as compared with \$20 per ton for ground iron ore, both f. o. b. Neda. Crude iron ore moves in open-top equipment. Ground iron ore is shipped in paper sacks, and, in order to avoid damage in transit, is loaded in water-tight box-car equipment, free from nails and slivers. The difference in the transportation characteristics of the two commodities justifies lower rates on crude than on ground iron ore.

During the last six months of 1922 complainant shipped 39 cars, averaging 58,710 pounds, to all destinations. Upon the basis of short-line distances and the average weight of complainant's ship-

ments to Chicago and St. Louis, respectively, the assailed rates to these points yielded the following average revenues:

To—	Distance	Per car	Per car-mile	Per ton-mile
	<i>Miles</i>		<i>Cents</i>	<i>Mills</i>
Chicago.....	134	\$76.30	56.9	20.9
St. Louis.....	417	92.00	22.1	11.0

The rates to Michigan City, Dayton, Detroit, Columbus, Cleveland, and Pittsburgh which complainant assails, and the average revenues produced thereby upon the basis of short-line distances and the average weight of complainant's shipments to each of those points during the last six months of 1922, are as follows:

To—	Distance	Rate	Per car	Per car-mile	Per ton-mile
	<i>Miles</i>	<i>Cents</i>		<i>Cents</i>	<i>Mills</i>
Michigan City.....	190	21.5	\$124.37	65.5	22.6
Dayton.....	397	30	256.00	64.5	15.1
Detroit.....	406	28.5	171.00	42.1	14.0
Columbus.....	437	31.5	120.00	27.5	14.4
Cleveland.....	473	32	211.20	44.7	13.5
Pittsburgh.....	602	35.5	237.25	39.4	11.8

Complainant compares the rates assailed to the points last named with sixth-class rates on ground iron ore from East St. Louis to the same destinations. The rates compared and distances from East St. Louis are as follows: Michigan City, 359 miles, 23.5 cents; Dayton, 394 miles, 24.5 cents; Columbus, 418 miles, 26.5 cents; Cleveland, 533 miles, 29 cents; Detroit, 488 miles, 28 cents; Pittsburgh, 609 miles, 34.5 cents. Ground iron ore moves on sixth-class rates throughout official classification territory. Generally speaking the class rates to destinations in central territory are on a relatively higher basis from Wisconsin points than from East St. Louis. In *Winters Metallic Paint Co. v. C., M. & St. P. Ry. Co.*, *supra*, we prescribed sixth-class rates on ground iron ore from Iron Ridge, Wis., to certain points in central and trunk-line territories. To the points named the rates assailed constitute the following percentages of combinations composed of the contemporaneous class C rates to Milwaukee plus the sixth-class rates beyond: Michigan City, 80 per cent; Dayton, 83 per cent; Columbus, 86 per cent; Cleveland, 85 per cent; Detroit, 79 per cent; Pittsburgh, 87 per cent.

Defendants admit that the assailed rate of 21 cents from Neda to Kankakee should not have exceeded 18.5 cents, the contemporaneous rate from Iron Ridge to the same destination. On October 15, 1923, this rate was reduced to 18.5 cents.

The assailed rate of 88 cents to New Orleans is the full class C rate. Apparently complainant has made no shipments under this rate. Sixth-class rates of 89 cents from Milwaukee, 85 cents from Chicago, and 74.5 cents from St. Louis apply on ground iron ore to New Orleans.

During the last six months of 1922 complainant made shipments to San Francisco, Los Angeles, and San Diego, Calif., Portland, Oreg., and Seattle, Wash. The rate of 85 cents assailed is 54 per cent of the contemporaneous class D rate to those points. Based upon the average short-line distance of 2,266 miles to those points and the average loading of complainant's shipments the 85-cent rate yielded \$499.04 per car, 21.6 cents per car-mile, and 7.5 mills per ton-mile.

In *Winters Metallic Paint Co. v. C., M. & St. P. Ry. Co.*, 18 I. C. C. 596, we prescribed a rate of 60 cents on ground iron ore from Iron Ridge Junction, Wis., to Spokane, Wash. At that time the 60-cent rate also applied from Iron Ridge Junction to other Pacific coast points. The rates assailed do not exceed the former 60-cent rate as subjected to the general rate adjustments of 1918, 1920, and 1922.

Complainant instances rates on various dry paints or paint pigments, including sienna, and various ochers and oxides the values of which are said to range from \$28 to \$110 per ton. The comparative rates in all instances are considerably higher than those assailed.

MINIMUM WEIGHTS

The present tariff minima on carload shipments of ground iron ore from Neda are 60,000 pounds to the Pacific coast and 36,000 pounds to the other destinations. Complainant seeks lower rates with varying minima to different points. The suggested minima are 80,000 pounds to Kankakee and the Pacific coast, 40,000 and 80,000 pounds to New Orleans, and 36,000 and 80,000 pounds to the remaining points. This request is based solely upon the alleged requirements of the various classes of purchasers at different points. During the last six months of 1922 complainant's shipments averaged 58,710 per car. No shipments were made during this period to New Orleans or Pacific coast points. Eight shipments to Kankakee averaged 61,150 pounds and only one car was loaded to 80,000 pounds. No grounds are shown for the establishment of lower rates with higher minima.

UNDUE PREJUDICE

Competitors of complainant manufacture metallic paints from ground iron ore at Bensenville and East St. Louis. As previously stated, the rates on crude iron ore from Neda to Bensenville and East St. Louis are considerably lower than the rates on ground iron ore. The rate on hard coal from Chicago to Neda is higher than the rate on crude iron ore from Neda to Bensenville. Complainant contends that as a consequence his cost of manufacture is relatively greater than that of his competitors at Bensenville and East St. Louis, and that this results in unjust discrimination and undue prejudice to him. As the two commodities, crude iron ore and ground iron ore, are not like kinds of traffic within the meaning of section 2 the allegation of unjust discrimination is wholly unfounded. Neither do the facts relied upon constitute undue prejudice. As we have before stated, the circumstances and conditions surrounding the transportation of these commodities are so dissimilar as to warrant lower rates on crude than on ground iron ore. The rate complainant pays for the transportation of coal is not in any sense related to the rate paid by his competitor at Bensenville on crude iron ore.

We find that the rates assailed were not and are not unreasonable or otherwise unlawful. The complaints will be dismissed.

93 I. C. C.

No. 15122

GULF COAST CITRUS EXCHANGE ET AL. *v.* LOUISVILLE
& NASHVILLE RAILROAD COMPANY ET AL.

Submitted June 13, 1924. Decided October 31, 1924

Rates on oranges, in carloads, from Grand Bay, Irvington, Bay Minette, Loxley, Silver Hill, and Foley, Ala., to destinations in central and western territories found unreasonable. Reparation awarded.

M. M. Caskie for complainants.

R. R. Cobb for Mobile Chamber of Commerce, intervener.

Edward D. Mohr for Louisville & Nashville Railroad Company.

REPORT OF THE COMMISSION

DIVISION 3, COMMISSIONERS HALL, CAMPBELL, AND COX

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainants are the Gulf Coast Citrus Exchange, Foley Citrus Growers Association, Robertsedale Citrus Growers Association, and Sanford-Seever Orchids Company, corporations packing, marketing, and shipping oranges for the growers, the first two named having offices at Silver Hill and Foley, Ala., respectively, and the other two at Robertsedale, Ala. By complaint filed July 23, 1923, they allege that the rates on oranges, in carloads, from Silver Hill, Foley, Loxley, Bay Minette, Irvington, and Grand Bay, Ala., to numerous destinations in central and western territories were and are unreasonable. We are asked to prescribe reasonable rates for the future and to award reparation.

Since the hearing defendants have established the rates sought by complainants and the only question remaining for determination is that of reparation on past shipments.

Bay Minette is north and Irvington and Grand Bay are south of Mobile, Ala., on the main line of the Louisville & Nashville between New Orleans, La., and Flomaton, Ala. Loxley, Silver Hill, and Foley are on a branch line of that defendant which extends south from Bay Minette. The oranges shipped from these points are what are known as the Satsuma orange, a small orange about the size of the tangerine. They are grown only within a somewhat limited area

along the Gulf coast between the Alabama-Florida State line and New Orleans, and marketed during the period from about October 15 to December 20.

The rates charged from points other than Irvington and Grand Bay were stated in cents per box of 80 pounds to all but four of the destinations. The rates charged from and to all the points, together with those to the basis of which reparation is sought, all stated in cents per 100 pounds, are set forth below:

To—	From Bay Minette, Loxley, Silver Hill, and Foley		From Irvington and Grand Bay	
	Charged	Sought	Charged	Sought
	<i>Cents</i>	<i>Cents</i>	<i>Cents</i>	<i>Cents</i>
Pittsburgh, Pa.....	115. 5	83	97	83
Buffalo, N. Y.....	115. 5	83	97	83
Chicago, Ill.....	110	70. 5	84. 5	70. 5
Cincinnati, Ohio.....	93	62	76	62
Cleveland, Ohio.....	114. 5	75	89	75
Columbus, Ohio.....	110	75	89	75
Detroit, Mich.....	114. 5	75	89	75
Lincoln, Nebr.....	¹ 150	111	² 135. 5	111
Minneapolis, Minn.....	³ 145	106	⁴ 130. 5	106
Omaha, Nebr.....	⁵ 144. 5	105. 5	⁶ 130	105. 5
Sioux City, Iowa.....	⁵ 144. 5	105. 5	⁶ 130	105. 5

¹ Rate from Bay Minette 144 cents.

² Rate from Grand Bay 144 cents.

³ Rate from Bay Minette 139 cents.

⁴ Rate from Grand Bay 139 cents.

⁵ Rate from Bay Minette 138.5 cents.

⁶ Rate from Grand Bay 138.5 cents.

The rates charged from Bay Minette,, Irvington and Grand Bay to Lincoln, Omaha, Sioux City, and Minneapolis were made by combinations on Mobile, and from Loxley, Silver Hill, and Foley to these destinations, by combination on New Orleans. The other rates charged were joint commodity rates.

By letter dated June 5, 1922, defendant Louisville & Nashville was requested on behalf of complainant Gulf Coast Citrus Exchange to establish rates on this traffic to destinations in central territory and to other points from certain points in Alabama, including Bay Minette, Loxley, Silver Hill, and Foley, the same as those in effect from Mobile and points in the vicinity thereof. A similar request was telegraphed this defendant on November 23, 1922, in response to which, on November 28 of that year, it indicated its willingness to establish the rates sought, or rates the same as those in effect from Mobile, but stated that it was impossible to publish the rates in time to be available for that season. Prior to the filing of the complaint herein further efforts were made by complainants to secure the publication of these rates, which were finally established December 26, 1923. At the hearing complainants limited their claim for reparation to shipments that moved during 1922 and 1923.

The rates sought are the same as those contemporaneously in effect on oranges from New Orleans and Mobile to the above destinations. The rates from New Orleans applied through Irvington and Grand Bay and from Mobile through Bay Minette over the route of the Louisville & Nashville and its connections. These were and are also the rates on oranges to the same destinations from Gulf & Ship Island stations, Landon, Miss., to Maxie, Miss., inclusive; Gulf, Mobile & Northern stations, Orchard, Ala., to Merrill, Miss., inclusive; and Southern stations, Mobile to Calvert, Ala., inclusive, all of which are in the same general territory as the points of origin here considered. During 1922 and 1923 equal rates on oranges were maintained from all of these latter points to eastern cities.

Defendant Louisville & Nashville contends that reparation should not be awarded, particularly on shipments that moved during 1922, for the reason that when it was determined, on November 28 of that year, to reduce the rates there remained insufficient time before the close of that shipping season to provide for their publication. The issue, however, is whether the rates charged on complainants' shipments were unreasonable. If complainants paid unreasonable rates it follows that they are entitled to reparation. No evidence was offered in defense of the reasonableness of the rates charged.

We find that the rates assailed were unreasonable to the extent that they exceeded the rates established December 26, 1923; that complainants made shipments during 1922 and 1923 as described and paid the charges thereon at the rates herein found unreasonable; that they had been damaged thereby in the amount of the difference between the charges paid and those which would have accrued at the rates herein found reasonable; and that they are entitled to reparation, with interest. Complainants should comply with Rule V of the Rules of Practice.

No. 14028

MISSISSIPPI RAILROAD COMMISSION ET AL. *v.* ALABAMA & VICKSBURG RAILWAY COMPANY ET AL.*Submitted February 18, 1924. Decided November 24, 1924*

1. Rates on grain and grain products, in carloads, from interior points in Texas, Oklahoma, Kansas, Nebraska, Colorado, Iowa, Minnesota, Indiana, Illinois, and Missouri, and reshipping rates on the same commodities from reshipping points in the States named to points in Mississippi, found not unreasonable.
2. Maintenance of reshipping rates to and from Memphis, Tenn., without contemporaneously maintaining reshipping rates to and from Mississippi points, found not unduly prejudicial; but complainants found to be subjected to undue prejudice in so far as the rules, regulations, and practices under which grain or its products may be stopped at Memphis for milling, storing, or other transit services and later reforwarded at less than the sums of the local rates to and from Memphis, are more favorable than the rules, regulations, and practices under which transit service is accorded at Mississippi points.

Frank Roberson, attorney general, and *B. F. Martin* for complainants.

R. V. Fletcher, *A. P. Humburg*, *W. N. McGehee*, *D. L. Younger*, *William T. Boardman*, *Robert N. Nash*, *S. L. Scott*, *J. L. Hill*, and *J. M. Simon* for defendants.

Ray Williams for Cairo Board of Trade; *J. B. McGinnis* for Memphis Merchants Exchange; *C. W. Hayward* for Meridian Traffic Bureau; *Charles Rippin* for Merchants Exchange, St. Louis, Mo.; *G. S. Gibson* for New Orleans Mixed Feed Manufacturers & Grain Dealers Association; and *Alexander Fitzhugh* for Vicksburg Board of Trade.

REPORT OF THE COMMISSION

DIVISION 2, COMMISSIONERS AITCHISON, ESCH, AND McMANAMY
AITCHISON, *Commissioner*:

Exceptions were filed to the proposed report of the examiner, and the parties were heard in oral argument. Our conclusions differ from those proposed by him.

Complainants are the Mississippi Railroad Commission, the attorney general of the State of Mississippi, and various commercial
93 I. C. C.

organizations and business houses located at Mississippi points. The complaint alleges that the local, proportional, and reshipping rates on grain and grain products from points in the States of Texas, Oklahoma, Kansas, Nebraska, Colorado, Iowa, Minnesota, Indiana, Illinois, and Missouri to all points in the State of Mississippi are unreasonable, unjustly discriminatory, and unduly prejudicial; and that the application of more favorable rules, regulations, and practices governing the handling, storing, sale, and disposition of grain and grain products at Memphis, Tenn., St. Louis, Mo., and Cairo, Ill., than at points in Mississippi subjects the latter to unjust discrimination and undue prejudice. The complainants pray for an order prescribing for the future reasonable, nondiscriminatory, and nonprejudicial rates, rules, transit privileges, and regulations covering the transportation to, and storing, handling, sale, and distribution of grain and grain products at Mississippi points. The Cairo Board of Trade, Memphis Merchants Exchange, New Orleans Joint Traffic Bureau, New Orleans Mixed Feed Manufacturers & Grain Dealers Association, Jackson Traffic Bureau, Merchants Exchange of St. Louis, Mo., Vicksburg Board of Trade, and Louisiana Public Service Commission intervened.

The State of Mississippi produces no wheat, and its production of corn and oats falls far below its needs. The shortage is made up by shipping grain and grain products into the State from territories of surplus production. The complaint is brought primarily on behalf of the consumers of Mississippi, chiefly to effect a reduction in the general level of rates on grain and grain products from producing sections and distributing markets into that State. Secondarily, the complaint seeks the removal of alleged unjust discrimination and undue prejudice against dealers in grain and grain products located at points in Mississippi, claimed to exist because their competitors at Memphis and other points are preferred by the system of rates, rules, regulations, and practices under which they operate.

While the complaint attacks both local and reshipping rates into Mississippi, the local rates from Memphis are paper rates and carry no traffic. Comparatively little evidence was introduced as to them. No evidence was submitted to support the allegation of a violation of section 2. Although the complaint alleges that the Mississippi points are unduly prejudiced by certain rules, regulations, and practices in force at Memphis, St. Louis, and Cairo, the evidence on this point was specifically restricted to Memphis.

The principal grains moved to Mississippi are corn and oats, but the case involves rates on all grain and grain products from a wide territory of origin to the entire State. From certain territory of origin rates on all grain and grain products to Mississippi are the

same. From other territory the rates on wheat and flour are somewhat higher than the rates on coarse grain. The factors of the through rates assailed are the same from Memphis south in either instance. For convenience illustrative comparisons will be confined to rates on coarse grain, which will be stated in cents per 100 pounds.

The principal grain-producing territories in the United States are west of the Mississippi and north of the Ohio Rivers. The chief consuming territories of the surplus production of those sections are in the east, south, and southeast sections of the country, including Mississippi Valley territory, of which 75 per cent is within the State of Mississippi. Grain originating at country stations in the producing territory generally moves to near-by elevators. Much is forwarded thence to primary markets, from which it is either shipped directly to consuming sections or to other primary or jobbing markets adjacent to the consuming territory. The general basis for rates on grain from territory west of the Mississippi River to territory east of the Mississippi and south of the Ohio Rivers is the combination of local and proportional rates on certain basing points, known as primary markets or reshipping points. Largely natural strategic location has fixed these points as places where the rates break. They are situated on the Missouri River, at the Ohio and Mississippi River crossings, and also Chicago and Peoria, Ill., and St. Paul and Minneapolis, Minn. To permit these markets to compete with each other on an equal basis, proportional or reshipping rates are so published as to equalize the through rates to consuming territories by way of the different markets. Thus, grain from the West or Illinois moves to the territory south of the Ohio and east of the Mississippi Rivers on combinations through the various markets. For example, from Kansas City, Mo., to Jackson, Miss., the reshipping rate on coarse grain is 37 cents, composed of reshipping rates of 22.5 cents to Memphis and 14.5 cents beyond. To Jackson, Omaha, Nebr., takes 1 cent over Kansas City, or 38 cents, although the proportional rate, Omaha to Kansas City, is 7 cents. The Omaha rate by way of Kansas City is equalized through St. Louis, the reshipping components being 12 cents Omaha to St. Louis, 11.5 cents St. Louis to Memphis, and 14.5 cents Memphis to Jackson. From important reshipping points, reshipping rates apply to points in Mississippi. These rates are generally the full combination of reshipping rates to Memphis plus the reshipping rates beyond. There are no reshipping rates in force from Oklahoma and Texas points. From interior points in the territory of origin of the complaint there are comparatively few through rates published to Mississippi points, and the effective basis is the combinations composed of local rates

from interior points to reshipping points and reshipping rates beyond. This is the basis in effect to all of the territory east of the Mississippi River and south of the Ohio River, and is not peculiar to Mississippi. Except in certain instances where combinations over Vicksburg, Miss., or New Orleans, La., apply from Texas points, these rates are likewise made by combination over Memphis.

In the application of grain rates the destination territory in Mississippi is divided into six groups, known as the Helena, Corinth, Greenville, Vicksburg, Natchez, and New Orleans groups. Five of these groups are in Mississippi Valley territory south of Memphis, most of which lies within Mississippi. The Helena group extends across the extreme northern portion of the State and generally comprehends territory west of the line of the Mobile & Ohio and east and north of Helena, Ark., including such points as Hernando, Holly Springs, New Albany, and Ripley. The Greenville group is directly south of the Helena group, bounded on the south and east by the Columbus & Greenville, Illinois Central, and St. Louis-San Francisco, extending through Greenwood, Winona, Starkville, Columbus, West Point, and Amory. Greenville, Grenada, West Point, Greenwood, Winona, Aberdeen, and Durant lie within this group. The Vicksburg group lies directly south of the Greenville group, embracing the territory west of the Mobile & Ohio, on and north of the Alabama & Vicksburg. Vicksburg, Jackson, Meridian, Yazoo City, Canton, and Newton are located in this group. The Natchez group is directly south of the Vicksburg group and includes generally the territory west of the Mobile & Ohio and north of the Mississippi Central line extending from Natchez through Brookhaven to Hattiesburg. Natchez, Brookhaven, Hattiesburg, and Laurel are important points in this group. The New Orleans group embraces the Mississippi Valley territory south of the Natchez group. In addition to Mississippi cities it includes Mobile, Ala., and New Orleans. The Corinth group covers a narrow strip of territory extending north and south between the eastern boundary of Mississippi Valley territory and the Alabama-Mississippi State line. The evidence as to this territory is meager, possibly because Corinth is the only point of any importance in it.

The history of these groups is recited in our report in *Helena Traffic Bureau v. M. P. R. R. Co.*, 89 I. C. C. 405, 408, as follows:

The commodity revision from St. Louis and points basing thereon intended to comply with our orders in both the *Memphis Southwestern case* and the *Helena case*, was considered in *I. and S. 1303, Part II, supra*. The rates proposed in that proceeding were condemned, but no disapproval of the plan of fixing the rates to the Mississippi Valley was expressed, and this plan is in general effect at present. Under it commodity groups were established in

the Mississippi Valley, the geographical limitations of which correspond to the class rate groups previously established. Commodity rates were then fixed to New Orleans, and graded back to the various groups in the same percentages of the New Orleans rate as the first-class rate to a given group bore to the first-class rate to New Orleans. Grain rates conform to this general grouping arrangement with the exception of the rates to the three groups of Memphis, Corinth, and Helena.

In *Rates to, from, and between Points South of Ohio River*, 64 I. C. C. 306, we prescribed reshipping rates from St. Louis of 12.5 cents to Memphis and 31.5 cents to New Orleans. Under the general reductions of 1922 these rates became 11.5 cents to Memphis and 28.5 cents to New Orleans, a spread of 17 cents. Using this spread as a maximum, the carriers operating south from Memphis established reshipping rates from that point to intermediate Mississippi group points. Under this adjustment the rates to the Helena group are graded until they reach a maximum of 11 cents. The remaining groups, with average distance from Memphis, and applicable reshipping rates are shown below:

Group	Average distance	Rate
	<i>Miles</i>	<i>Cents</i>
Corinth.....	72	11
Greenville.....	126	13
Vicksburg.....	206	14.5
Natchez.....	269	16
New Orleans.....	341	17

The readjustment following the decision just cited resulted in reductions in rates of from 4 to 6.5 cents at important interior points, such as Aberdeen, Jackson, and Meridian, with similar increases at the river points, of which Vicksburg and Natchez are the most important.

These reshipping rates, which are balances of through rates as previously explained, are used as factors south of Memphis in making rates from reshipping points and interior points in the territory of origin of the complaint, with certain exceptions in case of Texas. From Texas, the rates to Mississippi are generally full combinations over Memphis, Vicksburg, or New Orleans. To local points on certain short lines in Mississippi, such as the Mississippi Central, Columbus & Greenville, Gulf & Ship Island, and New Orleans Great Northern, arbitraries over the junction-point group rates are applied.

The readjustment in grain rates to Memphis and New Orleans brought about by our decision in *Rates to, from, and between Points South of Ohio River*, *supra*, concerned primarily those from reshipping points. No corresponding adjustment has been made in the rates from certain interior points in States west of the Mississippi

River to the same points. From these interior points combination rates, composed of the local rates to Memphis and the full reshipping rates beyond, are generally in force to Mississippi points. As a result fourth-section violations exist at numerous Mississippi points. The following comparison of the rates on coarse grain is illustrative of the situation:

From Nevada, Mo., to—	Cents
Memphis, Tenn.....	25
Jackson, Miss.....	39. 5
New Orleans, La.....	35. 5
From Hastings, Nebr., to—	
Memphis, Tenn.....	38. 5
Jackson, Miss.....	53
New Orleans, La.....	49
From Wichita, Kans., to—	
Memphis, Tenn.....	32. 5
Jackson, Miss.....	46. 5
New Orleans, La.....	39. 5

The same condition exists at numerous other points in Mississippi, due to the fact that the spread in the rates as between Memphis and New Orleans is less than the reshipping rates from Memphis to Mississippi points. In *Grain, Grain Products, and Feeds*, 78 I. C. C. 209, schedules which proposed increases in rates intended to correct this situation were found not justified. It was there said that increased rates lower than those proposed on the full combinations apparently would be proper from the territory of origin from which the combination basis was formerly maintained.

Complainants' attack is directed against the reshipping rates from Memphis to Mississippi points, considered as factors of through rates. The ton-mile revenues produced by the reshipping rates from St. Louis to Memphis, New Orleans, and typical Mississippi points are compared below:

To—	Distance	Ton-mile revenue
	<i>Miles</i>	<i>Mills</i>
Memphis.....	305	7. 54
Holly Springs.....	351	12. 82
Grenada.....	404	12. 13
Canton.....	492	10. 57
Hazelhurst.....	549	10. 02
New Orleans.....	701	8. 13

Complainants refer to the fact that, in prescribing reshipping rates from St. Louis to Memphis and New Orleans we said that "in other instances where reshipping rates are in effect, they should be revised in harmony with the rates prescribed from St. Louis to Memphis and New Orleans, distance considered." *Rates to, from, and between Points South of Ohio River, supra*, page 340. Defendants

claim that the reshipping rates were graded from Memphis as far as was consistent with equalization, and that usually where reshipping rates apply to and from a given point, there are abrupt breaks in the outbound rates to points immediately beyond. They refer to the situations at Kansas City, Omaha, Chicago, and other primary markets where, generally speaking, the same abrupt gradation occurs. For example, the proportional rates from Kansas City range from 8.5 cents to 16 cents for distances comparable to those involved in the instant case.

Complainants assail the method of making rates to Mississippi points by combination over Memphis. They contend that grain rates to points in that State should be established on a strict mileage basis, by projecting the St. Louis to Memphis reshipping rate of 11.5 cents for the distances involved. This would produce rates relatively lower to Mississippi points than to New Orleans, for the Memphis rate of 11.5 cents is relatively lower than the New Orleans rate of 28.5 cents. But Mississippi shippers, at least, are not unanimously in favor of such a scale. Meridian is by far the largest jobbing point for grain in Mississippi. Hattiesburg is also a large grain-jobbing point. Representatives of these cities stated that they preferred the present group arrangement to a strict mileage scale. The groups applying on grain and grain products follow closely the groups for other classes of traffic established by the carriers after conferences with shippers. Defendants object to the proposed scale because they believe that its application would tend to deplete their revenues. The principal complaint is that the groups are too large. Use of the reshipping rate from St. Louis to Memphis as a measure of reasonable rates to Mississippi points is claimed to be improper, as it is merely the balance of a through rate. However, in so far as it applies on traffic destined to Memphis and not moving beyond that point, it appears to be not more the balance of a through rate than are the reshipping rates from St. Louis to Mississippi points.

In *Helena Traffic Bureau v. M. P. R. R. Co.*, *supra*, we recently had occasion to consider a contention that the reshipping rate from St. Louis to Memphis is a proper measure of the reasonableness of the rate from St. Louis to Helena. We there said, page 410:

These rates to Arkansas and to the Mississippi Valley represent the ordinary level of proportional grain rates to this territory. The rates to Memphis are extraordinary, and made to fit a peculiar situation, in no way paralleled by the situation at Helena, or for that matter at any point in southern or southwestern territory. Memphis has long been what is termed in the grain business a "primary market." Rates have been made to break thereon. The adjustment is of long standing. These rates have been maintained at a low level consistent with that of other proportional rates from the Missouri River. Proportional rates both from the Missouri River and from St. Louis

to Memphis are among the lowest rates in the country on high-grade traffic. In considering rates proposed in *I. and S. 1303* we sought to do no more than to preserve the revenues of the carriers, and to fix proportional rates which would not disturb these long-existing relationships.

Numerous rate comparisons were submitted by complainants and defendants. In instances, by the use of group rates the parties have attained different results from substantially the same rate comparisons. The principal comparisons submitted by defendants are with rates from selected markets to the Southeast and the Southwest. Taking reshipping rates from Omaha as typical of the adjustment from the reshipping points, and Champaign, Ill., as a typical interior producing point in the Illinois fields, the following table shows the relative situations:

From Omaha, Nebr.			From Champaign, Ill.		
	Distance	Rate		Distance	Rate
To Mississippi Valley groups:	<i>Miles</i>	<i>Cents</i>	To Mississippi Valley groups:	<i>Miles</i>	<i>Cents</i>
Corinth.....	1 728	28	Corinth.....	1 400	27. 5
Greenville.....	1 816	36. 5	Greenville.....	1 550	36
Vicksburg.....	1 885	37. 5	Vicksburg.....	1 619	37
Natchez.....	1 962	39	Natchez.....	1 696	38. 5
New Orleans.....	1 1, 060	40. 5	New Orleans.....	1 784	40
To the Southwest:			To the Southwest:		
Shreveport, La.....	759	38. 5	Newport, Ark.....	418	30. 5
Monroe, La.....	856	37. 5	Snow Lake, Ark.....	525	36
Alexandria, La.....	882	39. 5	Warren, Ark.....	610	38. 5
Lake Charles, La.....	943	45	Texarkana, Ark.....	660	40. 5
To the Southeast:			Monroe, La.....	667	45
Nashville, Tenn.....	737	35. 5	To the Southeast:		
Sheffield, Ala.....	789	44. 5	Nashville, Tenn.....	331	35
Birmingham, Ala.....	896	48	Birmingham, Ala.....	536	47. 5
Montgomery, Ala.....	993	48	Atlanta, Ga.....	619	50
Atlanta, Ga.....	1, 025	50. 5	Columbus, Ga.....	693	53
			Monroe, Ga.....	681	55

¹ Average distance.

The reshipping rates from Memphis to points in the Southwest and Southeast for comparable distances range from 24 to 27 cents, and 11.5 to 31 cents, respectively, as compared with a range of from 11 to 17 cents in Mississippi Valley territory.

The ton-mile revenues yielded by moving rates, from representative interior points in Illinois, Missouri, Iowa, Kansas, Nebraska, and Oklahoma to Canton, which is typical of the Mississippi situation, are as follows:

To Canton, Miss., from—	Distance	Rate	Ton-mile revenue
	<i>Miles</i>	<i>Cents</i>	<i>Mills</i>
Stkeston, Mo.....	327	27	16. 33
Nevada, Mo.....	557	39	14. 00
Champaign, Ill.....	581	37	12. 00
Wichita, Kans.....	738	46. 5	12. 60
Des Moines, Iowa.....	832	40	9. 61
Salina, Kans.....	846	50	11. 82
Beatrice, Nebr.....	846	48	11. 34
Hastings, Nebr.....	963	52. 5	10. 90

Rates from the same points to destinations in the Southwest and Southeast in States adjoining Mississippi are generally higher for comparable distances.

As has been said, no reshipping rates are in force from points in Texas and there are few through rates. Rates to Mississippi points from Texas are generally made on the combination through Memphis, Vicksburg, or New Orleans, whichever is lower, although in some cases the applicable combination rates are higher than combinations by way of other river crossings.

Complainants assail the practice of making rates on grain from Texas to Mississippi on full combinations over Mississippi River crossings. In *Texas Grain Dealers Asso. v. A. & S. Ry. Co.*, 81 I. C. C. 96, we recently adverted to the fact that "the river-combination method of making rates to the Southeast is general and of long standing," and prescribed reasonable rates from Texas group points to points in the Southeast, including that part of Mississippi on and south of the Columbus & Greenville from Greenville, through West Point, on the basis of stated components to and from Vicksburg. The proportional rates prescribed to Vicksburg are 28 cents from Texas Groups 1 and 3, 32 cents from Groups 2, 4, and 5, and 35 cents from points in Texas west and north of Groups 2, 4, and 5, and a line drawn from Big Springs to but not including Seminole. The proportional rates prescribed from Vicksburg to Mississippi points are not to exceed the Memphis rates to the same points by more than 1 cent.

Jobbers at Meridian, Jackson, Hattiesburg, Greenville, Greenwood, Tupelo, Vicksburg, and other points in Mississippi engage in the sale and distribution of grain and grain products at those and other distributing and consuming points in that State. Meridian, the largest city in the State, handles over 6,000 cars of grain annually. Greenville, Jackson, Hattiesburg, and Vicksburg each handle 800 or more cars per year. The principal competition of jobbers at these points is with dealers at Memphis, who control about 60 per cent of the Mississippi grain business.

Complainants contend that the maintenance of reshipping rates to and from Memphis, while contemporaneously similar rates are denied to and from Mississippi jobbing points, subjects the latter to undue prejudice. Mississippi jobbing points, such as Meridian, Jackson, Greenville, and Greenwood, operate under transit arrangements, by which grain may be stopped in transit, and later reforwarded to other points in direct line of movement upon basis of the through rate from point of origin to ultimate destination. Mississippi dealers find it difficult, if not impossible, to ship back to consuming territory substantially north of them, in competition with Memphis,

grain which has moved to them over rails through the points of intended distribution. To such points Memphis ships on through rates, while the Mississippi jobber must in some cases pay back-haul locals in addition to the through rates. In other instances, jobbers at Meridian, Jackson, and Vicksburg can back haul grain up to 100 miles at less than local rates. Complainants admit the impracticability of having the rates break at every point in Mississippi. To correct the situation they suggest that Memphis, as well as the Mississippi points, be placed on a transit basis, and that the Mississippi points be allowed to back haul shipments at stated arbitraries based on distance.

Defendants state that they authorize transit wherever it is requested, provided the movement is in direct line from point of origin to ultimate destination and the transit point is located intermediate thereto. The originating territory from which grain may be drawn by Mississippi jobbing points under this arrangement extends practically from Colorado to Illinois. The complaining jobbing points enjoy the privilege of distributing grain and grain products from comparatively all fields of production to the consuming territory which they serve on a rate equality with Memphis and other rate-breaking points, provided the consuming points are beyond in direct line of transit from the source of the grain. From Jackson, Miss., for example, grain may be transited as far east as Meridian and as far south as Mobile, Gulfport, and New Orleans.

In the past we have consistently refused to extend the rate-breaking system to communities which alleged that they were unduly prejudiced because of rate breaks at other points with which they competed. *Sioux City Terminal Elevator Co. v. C., M. & St. P. Ry. Co.*, 23 I. C. C. 98, 27 I. C. C. 457; *Suffern Grain Co. v. I. C. R. R. Co.*, 27 I. C. C. 192; *Wichita Board of Trade v. A. & S. Ry. Co.*, 29 I. C. C. 376; *Toledo Produce Exchange v. N. Y. C. R. R. Co.*, 50 I. C. C. 515; *Iowa Railroad Commissioners v. Director General*, 63 I. C. C. 405; *Helena Traffic Bureau v. M. P. R. R. Co.*, *supra*.

Memphis is located on the Mississippi River, where the rails of the west-side lines meet those of the carriers operating east of the river. It is the dividing point for differences in rates and classification which apply to the sections to the east and west of it. It is advantageously situated to be a natural rate-breaking point. Memphis is the terminus of many of the principal carriers operating both east and west of the Mississippi River, and in case of others, is located on their main lines in direct route. The competing rails of these carriers extend to the grain fields of the North, the Northwest, and the Southwest. The territory contiguous to Memphis in Tennessee,

Missouri, and Arkansas produces considerable surplus grain, which originates on lines of railroad extending to Memphis. A large part of the surplus production of coarse grains in Oklahoma and southern Kansas naturally and necessarily moves through Memphis to ultimate consumers in the Southeast. Therefore, Memphis is an established market for grain, which is there received, sold on consignment, stored, or thence distributed to the Southeast or elsewhere. The Memphis Merchants Exchange, in fact the grain exchange of Memphis, operates under definite rules which are made known to and protect producers and other shippers of grain. Connections are maintained in the grain fields by exclusive dealers of grain located at Memphis. Dealers at Memphis receive grain in bulk and forward it to suit the demands of the consuming trade. From these facts, the circumstances and conditions under which reshipping rates are maintained at Memphis appear somewhat dissimilar from those which exist at jobbing points in Mississippi such as Jackson, Meridian, Hattiesburg, Greenville, and Greenwood.

Where dealers at Mississippi jobbing points operating under transit arrangements can obtain grain for handling and reshipment to points in the direct line of transit, the rate paid by them is no greater than that paid by Memphis competitors. But the regulations under which grain is transited are more restricted than those which apply in case of points where the rates break, as at Memphis, and Memphis dealers enjoy some advantages over dealers at Mississippi points. For example, a more liberal mixing of ingredients in live-stock feed is allowed at Memphis than at the Mississippi jobbing points.

Certain jobbing points in Mississippi produced witnesses who testified that the present transit arrangements are unsatisfactory. Some of the points in question are not operating under transit because they have not requested it. If upon reasonable request, transit in direct line of shipment is refused by the defendants, the matter may be brought to our attention. Aside from the expense of transit records, the chief difficulty lies in the refusal of the Illinois Central and certain other defendants to grant transit to Mississippi jobbing points in connection with back hauls, as has been done by the Mobile & Ohio and St. Louis-San Francisco. Since the hearing back-haul transit limited to 100 miles has been authorized by the Illinois Central. No proof was submitted that defendants have granted the privilege to others, while denying it to Mississippi points, in such a way as to constitute undue prejudice. Nor does it appear that Memphis dealers can back haul grain to points north thereof, even under their reshipping rates. The pull of the grain is definitely away from the territory of production, despite the rate situation.

We find that the rates on grain and grain products, in carloads, from interior points in Texas, Oklahoma, Kansas, Nebraska, Colorado, Iowa, Minnesota, Indiana, Illinois, and Missouri and reshipping rates on the same commodities from reshipping points in the States named to points in Mississippi are not unreasonable. We further find that the maintenance of reshipping rates from Memphis without contemporaneously maintaining reshipping rates from Mississippi points does not constitute undue prejudice, but that in so far as the rules, regulations, and practices under which grain or its products may be stopped at Memphis for milling, storing, or other transit services and later reforwarded at less than the sums of the local rates to and from Memphis, are more favorable than the rules, regulations, and practices under which transit service is accorded at Mississippi points, as stated in the complaint, the complainants are subjected to undue prejudice, which should be promptly removed. Our Bureau of Traffic is now negotiating with shippers and carriers with respect to a revision of the rules in force at primary markets, including Memphis, with a view to the establishment at the various markets of uniform rules which shall conform more nearly to the rules in force at interior points. Accordingly, no order will be entered at this time with respect to the transit situation. If such revision of the rules at Memphis and at Mississippi points as will remove the undue prejudice herein found to exist is not accomplished within a reasonable time, the matter will have our attention. As soon as the transit situation has been adjusted we will enter an order dismissing the complaint.

The temporary fourth-section relief authorized by our fourth-section order No. 7026 of November 30, 1917, will not be disturbed. All other violations with respect to rates considered herein should be promptly eliminated.

No. 15459

JOSEPH MUSTO SONS-KEENAN COMPANY v. SOUTHERN
PACIFIC COMPANY ET AL.

Submitted October 11, 1924. Decided November 17, 1924

Charges collected on two carloads of crushed marble from Los Angeles, Calif., to Fort Bliss, Tex., found unreasonable. Reparation awarded.

B. H. Carmichael, Glensor, Clewe & Van Dine, and F. W. Turcotte for complainant.

J. R. Bell, Elmer Westlake, James E. Lyons, and F. W. Mielke for defendants.

REPORT OF THE COMMISSION

DIVISION 4, COMMISSIONERS MEYER, EASTMAN, AND POTTER

BY DIVISION 4:

This case was presented under the shortened procedure. No exceptions were filed to the report proposed by the examiner.

Complainant, a corporation engaged in finishing and selling marble, with its principal place of business at San Francisco and a branch at Los Angeles, Calif., by complaint seasonably filed alleges that the rate charged by defendants on two carloads of crushed marble shipped May 14 and August 3, 1921, from Los Angeles to Fort Bliss, Tex., was unreasonable. Reparation only is sought. Rates will be stated in amounts per 100 pounds.

Fort Bliss is located 6 miles east of El Paso, Tex., in what is known as transcontinental Group J territory. The shipments moved over defendants' lines as routed, 820 miles. Their aggregate weight was 148,100 pounds, an average of 74,050 pounds per car. The commodity shipped, which was used in the construction of hospital floors, is in the nature of a waste product, having been crushed from small pieces of marble chipped off in the process of shaping and finishing large blocks. Its value at time of shipment ranged from \$8 to \$12 per ton, varying with the demand. In the absence of a commodity rate or specific classification rating on crushed marble charges were collected at the applicable class E rate of \$1.055 on stone, n.o.i.b.n., crushed or ground, minimum 40,000 pounds, from California points taking rate basis 1 to Group J points.

There was contemporaneously in effect between the points involved a rate of 65 cents, carload minimum 60,000 pounds, on "stone viz: marble, onyx, stone, rough," commodities said to be worth from \$100 to \$200 per ton at the time of these shipments; and a similar rate and minimum on "rock (Lime), ground or unground." Effective with general reductions of July 1, 1922, these rates became 58.5 cents, and on September 1, 1922, the description covering lime-rock was changed to read "stone, crushed or ground," without restriction as to kind, which would embrace the article here considered. The rate applicable in connection with this changed description was further reduced to 50 cents on June 18, 1923, at which time the carload minimum was increased to 80,000 pounds. Complainant seeks reparation based on the rate of 65 cents, contending that from a transportation standpoint crushed marble is analogous to the commodities referred to and should not take any higher rate. It calls attention to the fact that these commodity rates applied, and apply, from practically all California points, including points as far as 755 miles north of Los Angeles, to Group J territory, which includes points as far east as Denver, the latter point being approximately 800 miles farther than is Fort Bliss from Los Angeles.

Complainant exhibited numerous comparisons of carload rates maintained by defendants on crushed rock, both intrastate in California and between various interstate points in Pacific coast and intermountain territory, for comparable distances, under which the ton-mile earnings are substantially less than would accrue under the rate sought. Defendants state that the intrastate rates shown were published on an extremely low basis in order to move material for road making and construction purposes, of which there was a heavy movement over their lines during 1921. They do not consider rates on crushed rock for such uses a fair comparison with rates on crushed marble to be used in making floors. However, this lays emphasis upon the use made of the commodity, upon which basis we have repeatedly refused to sanction different rates, rather than pointing out any substantial difference in the character, value, and transportation characteristics of the compared commodities. *Lockport Paper Co. v. W. M. Ry. Co.*, 87 I. C. C., 347, page 349.

Complainants also instance interstate rates contemporaneously maintained by defendants, for hauls ranging from 801 to 1,608 miles, on numerous commodities, including cement, silica, fire brick, coke, talc, and barley and alfalfa meal, all of which are rated class E or higher in the western classification, which rates yield lower car-mile and ton-mile earnings than would result under the 65-cent rate on the shipments in issue. The value of these articles is said to be equal to or greater than that of crushed marble. With respect

to certain of these commodities, defendants state that there was no movement during 1921 between the points named in complainant's exhibit, but that considerations such as potential tonnage, the relation of rates from other producing points, and, in the case of barley and alfalfa meal, the rates on grain and grain products and the influence of competition through the Panama Canal, have entered into the establishment and maintenance of such rates.

For the most part defendants' evidence is general in character and not convincing. They rely mainly upon the view that these were unusual shipments to which class rates were properly applied; that neither the reasonableness of the class rate as such nor the propriety of the classification rating is attacked; and that the subsequent establishment of a lower rate does not prove the unreasonableness of the former rate or afford a basis for reparation. It is stated that the change in description September 1, 1922, was not made with the idea of including shipments of crushed marble from complainant's plant, but primarily for the purpose of providing for a prospective movement in volume of crushed rock from Los Angeles to Lincoln, Nebr. In response to defendants' statement that they have been unable to find record of any movement of crushed marble from Los Angeles to transcontinental groups other than these two cars, complainant calls attention to the fact that the tariff item covering the commodity in question embraces all kinds of crushed stone and suggests that, in view of the group system of rates in effect in this territory, consideration should be given to the movement of all kinds of crushed stone between the points in these groups; and that if, as appears, it was of sufficient volume to warrant the establishment of commodity rates between the respective groups, there is no good reason why shipments between the points in question should not be accorded commodity rates.

Crushed marble is low in value, loads heavily, is not susceptible to damage, and rarely moves at class rates even for very short hauls. Defendants' historical exhibit of the rates on various kinds of rock and stone, including marble, onyx, and limerock, in the rough state, either ground or unground, shows that these articles have for a number of years been on a commodity basis between the points in question. At the class rate of \$1.055 assessed, using the 60,000-pound minimum contemporaneously applicable to the comparable commodities taking the 65-cent rate, the car-mile earnings were 77.2 cents and the ton-mile earnings 2.57 cents. Under the 65-cent rate and the same minimum these earnings would be 47.6 cents and 1.58 cents, respectively. Based on the average weight of the cars shipped, viz, 74,050 pounds, the car-mile earnings under the rate charged were 95.28 cents and under the rate sought would be 58.7 cents.

We find that the rate assailed was unreasonable to the extent that it exceeded 65 cents per 100 pounds; that complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged to the extent of the difference between the charges paid and those that would have accrued under the rate here found reasonable; and that it is entitled to reparation in the sum of \$604.03, with interest.

An appropriate order will be entered.

93 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 2248

EXCEPTIONS TO OFFICIAL CLASSIFICATION RATING
ON BLASTING POWDER

Submitted October 27, 1924. Decided November 19, 1924

Proposed increased rating on common black blasting powder, in carloads, from Fairchance and Evans, Pa., and Rita, W. Va., found not justified. Suspended schedules ordered canceled without prejudice to the filing of new schedules in conformity with the findings.

Charles R. Webber for respondent.

Harvey S. Farrow for protestant.

L. V. Haas for Grasselli Powder Company.

REPORT OF THE COMMISSION

DIVISION 3, COMMISSIONERS HALL, AITCHISON, AND ESCH

BY DIVISION 3:

By schedules filed to become effective October 1, 1924, respondent, the Baltimore & Ohio, in exceptions to the official classification, proposed to cancel a provision for the application of third-class rates plus 3 cents per 100 pounds on common black blasting powder, in carloads, from Fairchance and Evans, Pa., and Rita, W. Va., to stations on respondent's line in the Pittsburgh, Pa., group and east thereof, and thereby to make applicable the first-class or second-class rating and rates, according to destination. Upon protest of E. I. Du Pont de Nemours & Company of Wilmington, Del., the schedules were suspended until January 29, 1925. The Grasselli Powder Company which has a powder plant at Quaker Falls, Pa., appeared at the hearing in opposition to any bases of rates from the points of origin named different from that from Quaker Falls.

The basis generally applicable on this commodity in the territory governed by the official classification is first class. By exceptions respondent provides for the application of second-class rates from and to certain points on its line. From Fairchance, Evans, and Rita, as already stated, these exceptions provide for the application of 3 cents per 100 pounds over third class.

Respondent states that competitive points such as Youngstown, Ohio, and Quaker Falls, Pa., from which the second-class rates are

applicable, objected to paying rates relatively higher than those from Fairchance, and rather than to extend the Fairchance basis, respondent proposed to cancel it. Application of the proposed bases from Fairchance would place it at a disadvantage and result in fourth-section departures on traffic to such destinations as Clarksburg, W. Va., to which point the first-class rate of 61 cents per 100 pounds would be applicable while from Youngstown and other more distant points, to which Fairchance is intermediate, the second-class rate of 59.5 cents would apply.

Although respondent takes the position that the first-class rates from Fairchance would not be unreasonable, it expressed willingness to cancel the proposed schedules and establish from all points of origin to all destinations here considered the second-class rating and rates inasmuch as that basis now applies from Quaker Falls and other more distant points to those destinations, and application of first-class rates from Fairchance to some of the destinations would create fourth-section departures.

Protestant and intervener both state that this adjustment would be satisfactory to them.

We find that the proposed schedules have not been justified, but that respondent has justified a rating of second class from and to the points considered.

An appropriate order will be entered requiring the cancellation of the suspended schedules and discontinuing this proceeding, without prejudice to the filing of new schedules in conformity with our findings.

INVESTIGATION AND SUSPENSION DOCKET No. 2211

COTTON, COTTON LINTERS, AND REGINS FROM OHIO
AND MISSISSIPPI RIVER CROSSINGS TO EASTERN
CITIES

Submitted October 24, 1924. Decided November 19, 1924

Proposed increased rates on cotton and cotton regins, uncompressed, any quantity, with privilege to carriers of compressing, and on cotton linters, uncompressed, in less than carloads, with privilege to carriers of compressing, from Cairo, Brookport, Gale, and Thebes, Ill., to eastern points found not justified. Schedules ordered canceled.

L. P. Day for respondents.

Ray Williams for protestants.

REPORT OF THE COMMISSION

DIVISION 3, COMMISSIONERS HALL, AITCHISON, AND ESCH

BY DIVISION 3:

By schedules filed to become effective August 15, 1924, respondents proposed to increase the rates on cotton and cotton regins, uncompressed, any quantity, with privilege to carriers of compressing, and on cotton linters, uncompressed, in less than carloads, with privilege to carriers of compressing, from Cairo, Brookport, Gale, and Thebes, Ill., to eastern points. Upon protest of the Cairo Association of Commerce the operation of the schedules was suspended until December 13, 1924. Rates will be stated in cents per 100 pounds, and the term cotton as hereinafter used will include cotton regins and cotton linters.

Cairo, Brookport, Gale, and Thebes take the same rates to eastern points. For convenience only Cairo will be referred to herein. The proposed increases to representative destinations are 7.5 cents per 100 pounds to New York, N. Y., rate points, and 6.5 cents to Boston, Mass., rate points.

Respondents explain that in 1904 the rates from St. Louis to New York on uncompressed and compressed cotton were 42.5 and 30 cents, respectively, and from Cairo 44.5 and 34.5 cents, respectively. In November, 1910, the rates on uncompressed cotton from Memphis to the east were increased 2 cents, and this amount of increase also was applied to both the rates from St. Louis, but no change was made

in the rates from Cairo. Since that date the rates from both St. Louis and Cairo have been subjected to the general increases and reductions. A witness for respondents testified that in the latter part of 1923 the rates on uncompressed cotton from St. Louis were made 20 cents higher than the corresponding rates on compressed cotton in order to reflect the cost of compression at that point. All rates on uncompressed cotton referred to in this report are published with the privilege to carriers of compressing. This witness also testified that a similar change should have been made at that time in the rates on uncompressed cotton from Cairo, but that through an oversight it was not done. In the suspended schedules it is proposed to effect that change. The present rates from St. Louis to New York on cotton and cotton regins, uncompressed, any quantity, and on cotton linters, uncompressed, in less than carloads, is 87.5 cents. The corresponding rate from Cairo is 83.5 cents. On compressed cotton the rates are 67.5 and 71 cents, respectively. Respondents propose to increase the 71-cent rate to 91 cents. They point out that if the rate on compressed cotton from Cairo had been increased 2 cents in 1910, along with the increases from other points it would now be 74.5 cents and the proposed rate would be 94.5 cents. It will be observed that instead of a difference of 2 cents in favor of St. Louis in the rates on uncompressed cotton effective in 1904 the present rates now show an advantage of 4 cents in favor of Cairo. The spread of 4.5 cents in the rates on compressed cotton in favor of St. Louis has been reduced to 3.5 cents during the same period. Moreover under the present adjustment the rates from Cairo are now lower on uncompressed cotton and higher on compressed than the corresponding rates from St. Louis.

The proposed rate from Cairo to New York would yield earnings of 16.9 mills per ton-mile, and, based on the short-line distance and on respondents' estimated average weight of 25,163 pounds, 21.3 cents per car-mile. These earnings are compared with earnings of 16.8 mills per ton-mile and 21.2 cents per car-mile under the present rate from St. Louis. The present rate from Cairo, 83.5 cents, yields 15.5 mills per ton-mile and 19.5 cents per car-mile.

With respect to class rates the record shows that St. Louis takes 117 per cent and Cairo 120 per cent of the Chicago-New York rates. The short-line distances from St. Louis and Cairo to New York are 1,040 and 1,076 miles, respectively. Cotton and cotton linters, uncompressed, are rated second class and third class in the governing classification, according to packing. The present second-class and third-class rates from St. Louis to New York are \$1.455 and \$1.105, respectively. The corresponding class rates from Cairo are \$1.495 and \$1.135, respectively. Respondents concede that the commodity

rates bear no fixed relation to the class rates, but they urge that the difference in distance, together with the fact that class rates from Cairo are uniformly higher than from St. Louis, justify a similar difference as to the rates here considered.

Protestants insist that the rates on uncompressed cotton from St. Louis are not a proper guide for fixing rates from Cairo. Respondents concede that the St. Louis rates are paper rates, but that is true to a great extent of the Cairo rates, although a movement from the latter point is expected to develop. Production of cotton in southern Illinois began in 1923 with 750 bales. The estimated yield for 1924 is 10,000 bales. None of the cotton thus far produced has moved directly to the East, most of it having been shipped through Memphis. Respondents refer to no rates on which traffic moves to demonstrate the reasonableness of the proposed schedules and paper rates have little, if any, probative force in that connection.

We find that the suspended schedules have not been justified. An order requiring their cancellation will be entered.

No. 14159

HELENA TRAFFIC BUREAU ET AL. v. MISSOURI PACIFIC
RAILROAD COMPANY ET AL.

Decided November 26, 1924

Findings in original report, 89 I. C. C. 405, modified in certain respects

REPORT OF THE COMMISSION ON RECONSIDERATION

DIVISION 3, COMMISSIONERS McCHORD, LEWIS, COX, AND McMANAMY
Cox, *Commissioner*:

In our original report, 89 I. C. C. 405, we found, among other things:

2. That the maintenance of or participation in by the Missouri Pacific over its west-side route of rates on grain and grain products from points in Kansas, from Kansas City, Mo., and from points in Missouri from which rates base on Kansas City to Helena more than 2.5 cents on wheat and 1.5 cents on coarse grains higher, and from points in Nebraska and Iowa, and Missouri except St. Louis, from which rates base on St. Louis, to Helena more than 5 cents on wheat and 3.5 cents on coarse grains higher, than the rates contemporaneously maintained to Memphis, is, and for the future will be, unduly prejudicial to Helena and unduly preferential of Memphis.

By petition the Missouri Pacific and other southwestern carriers asked that this finding be modified to read as follows, changes being indicated by italics:

2. That the maintenance of or participation in by the Missouri Pacific over its west-side route of rates on grain and grain products *from Kansas City, Mo., from points in Kansas from which the rates make on Kansas City combination, and from points in Missouri from which rates are made with relation to Kansas City* to Helena more than 2.5 cents on wheat and 1.5 cents on coarse grains higher, and from points in Nebraska and Iowa, and Missouri except St. Louis, from which rates base on St. Louis, to Helena more than *6 cents* on wheat and *4.5 cents* on coarse grains higher, than the rates contemporaneously maintained to Memphis, is, and for the future will be, unduly prejudicial to Helena and unduly preferential of Memphis.

As to rates from Kansas petitioners urge that the order as now worded would require reductions in rates from some points in Kansas from which rates are not made on the Kansas City combination. The rates shown of record from Kansas points to Helena which exceeded the corresponding rates to Memphis by more than the prescribed amounts were apparently such as would base on Kansas City,

and it was to such rates that this portion of the order was intended to apply.

With reference to the rates from Nebraska, Iowa, and Missouri petitioners ask that the differentials over Memphis of 5 cents on wheat and 3.5 cents on coarse grains be changed to 6 and 4.5 cents, respectively. As stated on page 413 of the original report, the differences prescribed were suggested by counsel for the Missouri Pacific and were understood to be the present differences between the proportional rates from Omaha to Memphis and Helena. These rates are stated on page 407 of the report as follows:

	Wheat.	Corn.
To Helena.....	30 cents.	27 cents.
To Memphis.....	25 cents.	23.5 cents.

It now appears that since the hearing the rates from Omaha to Helena have been increased 1 cent, or to 31 cents on wheat and 28 cents on corn, making the present differences, Helena over Memphis, 6 cents on wheat and 4.5 cents on corn. These changes were made in the course of a general readjustment of rates to Arkansas following our order in *Arkansas Jobbers & Mfrs. Asso. v. C., R. I. & P. Ry. Co.*, 80 I. C. C. 620. Petitioners point out that unless the order in the instant case is modified as requested it will require a reduction in the proportional rates from Omaha to the former basis, which would throw these rates out of line with rates to other Arkansas points.

Complainants in their answer state that they have no objection to the proposed changes.

We find that our previous findings should be modified as requested. An appropriate order will be entered.

93 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 2197¹

RESTRICTIONS IN THE COMBINATION RULE ON LIVESTOCK

Submitted November 3, 1924. Decided November 24, 1924

Restriction of application of so-called Kelly combination rule in cases of carload shipments of livestock upon combination rates, proposed in tariffs filed by respondent carriers in central territory, which would result in increased charges in some instances, found not justified. Suspended schedules ordered canceled, without prejudice to the filing of schedules which will appropriately relieve respondents of deductions not properly applicable to their own separately established rates.

W. J. Stevenson, L. P. Day, L. H. Strasser, F. A. Barber, Edwin Kluever, H. L. Miller, and J. C. Miller for central freight association lines, respondents.

A. F. Cleveland for Chicago & North Western Railway Company and Chicago, St. Paul, Minneapolis & Omaha Railway Company, interveners.

A. Z. Baker for Cleveland Provision Company, Cleveland Union Stockyards Company, and Cleveland Livestock Exchange; *Andrew H. Brown* for Cleveland Chamber of Commerce; *John R. Baker* and *Paul E. Blanchard* for Armour & Company and subsidiary companies; *W. C. Watson* for Swift & Company; and *E. M. O'Bryan, E. J. Norris, and Phillips, Mack & O'Bryan* for Allied Packers, Incorporated; protestants.

REPORT OF THE COMMISSION

DIVISION 1, COMMISSIONERS McCORD, LEWIS, AND McMANAMY

McCORD, *Commissioner*:

By schedules filed to become effective on August 1, 1924, and later dates, respondents proposed to amend their tariffs carrying rates on livestock between points in central territory, which rates are now subject to the so-called Kelly combination rule published in Agent B. T. Jones's, formerly Agent W. J. Kelly's, No. 228, I. C. C. No. U. S. 1, so as to restrict the application of that rule as hereinafter described. Upon protests by various interests and by appro-

¹ This report also embraces Investigation and Suspension Docket No. 2263, Restrictions in the Combination Rule on Livestock.

priate orders, the operation of the respective schedules has been postponed until December 29, 1924, and later dates.

The tariffs in question have carried and still carry the following provision:

Except as otherwise provided in tariff, as amended, rates on live stock, carloads, are subject to rules for constructing combination rates as provided in Agent W. J. Kelly's Freight Tariff No. 228, I. C. C. No. U. S. 1, supplements thereto or reissues thereof.

The agency tariff to which reference is thus made provides the following combination rule:

Where no published through rates are in effect from point of origin to destination on a commodity specified in section 2, and two or more commodity rate factors are used in arriving at a through rate for a continuous rail shipment thereof, such through rate will be arrived at in the following manner.

The manner provided is by deducting from the separately established commodity-rate factors composing the combination through rates certain specified amounts (now embodying the changes in rates through general increases and reductions since the original publication of the rule), and then adding back a specified amount to the sum of the commodity-rate factors thus obtained. The rule originated with the Director General of Railroads and was adopted as a corrective expedient whereby combination through rates on certain commodities, each factor of which had theretofore received a flat increase under General Order No. 28, were so amended as to reflect the same single increases as were applied to equivalent joint rates. As published in the agency tariff No. 228, the effective date of the rule was February 15, 1919.

By the schedules under suspension the respondents proposed to restrict the application of the combination rule by including the following provision in their tariffs naming rates on livestock from Mississippi River crossings, Chicago, Ill., and other gateways, applicable on such traffic moving from the western to the eastern territory:

This rule will only apply in connection with through rates where all the issues publishing factors used in arriving at through rate from original point of shipment to ultimate destination, carry reference to Agent B. T. Jones' Combination Tariff No. 228, I. C. C. No. U. S. 1, C. R. C. No. 656, and authorize an affirmative application thereof.

The reason for the proposed restriction is that in the course of time the western carriers dropped from some of the tariffs carrying their separately established rates on livestock from western points to the gateways their own references to the combination rule. Agreeably with our interpretation in a similar tariff situation in *Sligo Iron Store Co. v. W. M. Ry. Co.*, 62 I. C. C. 643, 73 I. C. C. 551, and 93 I. C. C.

other cases, the lines in central territory, which continued to carry the reference, were left in the position of alone holding out to shippers the benefits of combination rates constructed in accordance with the combination rule, and were therefore obligated to assume not only such deductions as were to be made from their own separately established rates but also those to be made from the separately established rates of the western lines.

Respondents maintain that, as a result of the western lines' elimination of reference to the combination rule, and therefore with separately established rate factors of those lines no longer subject thereto, the rule became inapplicable to through shipments from the western territory in such cases. Upon this ground respondents contend that the suspended schedules, if made effective, would occasion no increases in rates, and insist that the purpose of the schedules is merely to clarify the tariffs and avoid disputes with shippers. The contentions are substantially those which were urged and rejected in *Combination Rule on Lumber*, 93 I. C. C. 279, wherein the respondents sought really to controvert, although purporting to differentiate, the interpretative principle laid down and followed in the cases first above mentioned.

On a large volume of traffic the effect of the proposed restriction would be not merely to relieve respondents of the assumption of deductions from the western lines' separately established rates, but also of deductions from their own, since the combination rule would no longer have any application to combination rates in instances where any one or more of the carriers in the through route did not also make appropriate reference to the rule. It is obvious that the result in such instances would be an application of increased charges, the burden of justifying which rests upon respondents. It also appears that from some points originating like traffic the tariffs of western carriers still refer to the combination rule, and an inadmissible result of the restrictive provision would be to make the rates to be applied by the respondent eastern lines depend upon the separate tariffs of the western lines. This would not accord with the requirements of section 6 of the act.

Generally speaking, respondents' livestock rates from the gateways to points in the eastern territory are substantially those in effect immediately prior to June 25, 1918, as modified only by the subsequent general increases and reductions. Agency tariff No. 228 also provides that, upon reasonable request therefor, the carriers parties thereto will establish through rates, or proportional rates to and from basing points, which will result in substantially the same through charges as result from an application of the combination rule. While this further assurance could not be squared with a

restrictive provision which would result in an application of the full local rates east of the gateways, it certainly was never intended that the burden of the combination-rule shrinkages in both western and eastern rates should fall wholly upon one set of carriers. It is clear that the eastern lines should be responsible only for deductions properly to be made from their own separately established rates.

In view of the foregoing we need not consider other matters of record. We find that the suspended schedules have not been justified, and an order will be entered requiring their cancellation and discontinuing these proceedings. This, however, is without prejudice to the filing of new schedules which will appropriately relieve respondents from deductions not properly applicable to the rate factors east of the gateways.

93 I. C. C.

No. 12478¹

ALLOWANCES OF MILEAGE FOR MISSISSIPPI RIVER CROSSINGS

Submitted June 16, 1924. Decided November 11, 1924

The addition for the service of crossing the Mississippi River of 20 constructive miles to distances from west-bank points in determining charges for the transportation of articles taking class or commodity rates, computed on interstate distance class and commodity scales to and from Vicksburg and Natchez, Miss., Angola, North Baton Rouge, Harahan, and New Orleans, La., found unreasonable. Reasonable ferry tolls for the river transfer service at such crossings, applicable in connection with such distance rates, prescribed for the future.

George C. Chamberlain and J. C. Whiteford for Natchez Chamber of Commerce, Carl Giessow, Edgar Moulton, and Harry Y. Taylor for New Orleans Joint Traffic Bureau, A. A. Nelson for Lake Charles Association of Commerce, C. N. Nesom for Alexandria Chamber of Commerce, H. J. Fernandez for Monroe Traffic Bureau, W. S. Cornell for Chamber of Commerce of Shreveport, and Frank H. Andrews for Vicksburg Board of Trade.

Huey P. Long, Francis Williams, Shelby Taylor, John T. Michel, and W. M. Barrow for Louisiana Public Service Commission.

F. H. Wood, J. R. Bell, Victor Leovy, C. W. Brosius, Denegre, Leovy & Chaffe, Harry McCall, Esmond Phelps, L. D. Knapp, C. G. Cox, W. H. Stakelum, D. Lynch Younger, H. J. Niemann, H. G. Herbel, H. H. Larimore, C. C. P. Rausch, J. H. Raushman, jr., John A. Smith, J. N. Campbell, E. P. Twyman, I. C. Schlom, J. J. Tippin, C. H. Atherton, George Janvier, and J. I. Houston for respondents.

REPORT OF THE COMMISSION

AITCHISON, *Commissioner*:

This investigation was instituted by us upon our own motion to determine the lawfulness of the present practice of the respondents in making an allowance or addition to the actual mileage of 20 constructive miles in the application of scales for the interstate trans-

¹ This proceeding also embraces No. 12009, *Natchez Chamber of Commerce v. Natchez & Southern Railway Company et al.*

portation of articles taking class or commodity rates based on distance, as compensation for crossing the Mississippi River at Vicksburg and Natchez, Miss., Angola, Baton Rouge, Harahan, and New Orleans, La. The complaint in No. 12009, directed against the mileage allowance at Natchez, was consolidated with and made a part of this investigation.

The service here considered is between Vicksburg and Delta Point, La., the Vicksburg, Shreveport & Pacific crossing; between Natchez and Vidalia, La., the Missouri Pacific crossing; between Angola and Naples, La., the Louisiana Railway & Navigation Company crossing; between North Baton Rouge and Anchorage, La., the New Orleans, Texas & Mexico crossing; between Harahan and Avondale, La., and between New Orleans and Algiers, La., the Southern Pacific crossings; and between New Orleans and Gouldsboro, La., the Texas & Pacific-Missouri Pacific crossing. There are no railroad bridges across the Mississippi River south of Memphis, Tenn. Through railroad traffic is carried across the river by car ferries. The distance across the river at these various points is approximately 1 mile, except in case of the Angola-Naples crossing, where the distance is about 9 miles, as will be explained later.

This 20-mile addition or allowance applies only on traffic moving under class or commodity distance rates, and is added to the distance from or to the west-bank points. Application by the Texas & Pacific for authority to make such an allowance on intrastate traffic was granted on August 22, 1910, by the Railroad Commission of Louisiana. In *Class Rates between Stations in Louisiana*, 33 I. C. C. 302, decided March 2, 1915, in ordering the restoration of former distance rates applicable to interstate traffic from Baton Rouge we authorized respondent in computing mileage to "add 20 miles for Mississippi River transfer, similar permission with respect to intrastate traffic having recently been granted by the Railroad Commission of Louisiana." In *Natchez Chamber of Commerce v. L. & A. Ry. Co.*, 52 I. C. C. 105, 125, decided January 16, 1919, we authorized the addition of the same allowance to and from Vicksburg, Natchez, Baton Rouge, and New Orleans, and said: "The proposal to add 20 miles is in consonance with the rule of the Louisiana railroad commission with respect to intrastate traffic which crosses the Mississippi River and is handled on distance rates." However, neither the present Louisiana commission nor its predecessor has specifically passed upon the reasonableness of such an allowance. There is now pending before that commission an investigation, instituted on its own motion, involving this allowance,

93 I. C. C.

which is held in abeyance pending the determination of this proceeding.

The New Orleans and Natchez interests contend that the 20-mile allowance should be abolished and that there should be no additional charge for the ferry service. They insist that the higher cost of operation by car ferry than over a similar length of roadbed presents no reason for a separate charge which does not exist with equal force at other points on respondents' lines where, because of fills, cuts, bridges, or trestles, the cost of construction, maintenance, and operation is unusually high. Clearly, additional service is given in these river crossings, which, as far as this record discloses, has no parallel or equivalent in services performed elsewhere upon respondents' lines without the inclusion of additional elements in the charges for such services. The barge service is of an unusual character, is difficult, hazardous, and expensive and in the instant proceeding some separate charge seems justified. This was our finding in the *Memphis-Southwestern Investigation*, 55 I. C. C. 515, 540, where we said:

To depart in this instance from previous usage and to permit no specific allowance for a Mississippi bridge or river crossing where the instrumentalities therefor involve special investment or special service would be out of line with our action upon numerous rate schedules heretofore approved, and out of keeping with similar rate adjustments instituted by the carriers.

To that conclusion we adhere, upon the present record. In so doing we do not approve unreservedly the principle of making additional charges for unusual services of the sort here under consideration. We are not here called upon to determine that question. The testimony refers to some such unusual operating conditions where no additional charge is made, and the argument contains allusions as to the general practice of the carriers as to the imposition of added charges for overcoming great natural obstacles, but the record does not permit us to go into this as bearing upon the reasonableness of the rates before us. Our conclusion in the instant case can not conclude a future decision made upon a record which may show in detail, and more comprehensively, the general practice of these and other carriers as to making additional charges because of expensive bridges, trestles, tunnels, ferry operations, fills, and cuts, or other like devices against obstacles or barriers to transportation.

As the nature of the ferry service justifies some additional charge, we should inquire into the cost of that service.

At the original hearing respondents introduced exhibits purporting to show that during 1920 the expense incident to the operation of the transfer service at their Mississippi River crossings was

equivalent to the expense of operating 20 or more miles of their railroads. We summarize the results of these computations:

Crossing	Railroad	Transfer operating expense ¹	Average operating expense per mile of road ¹	Year	Equivalent of river transfer in miles of road
North Baton Rouge.....	Gulf Coast.....	\$301,438.20	\$13,239.55	1920	22.77
New Orleans.....	T. & P.-Mo. Pac..	205,595.97	9,432.07	1920	21.8
Do. ²	So. Pac.....	576,768.29	7,234.50	1920	28.2
Natchez.....	Mo. Pac.....	255,977.28	20,811.66	1920	27.7
Angola.....	L. R. & N.....	305,756.74	7,234.50	1920	35.1
Vicksburg.....	V., S. & P.....	173,124.73	10,785.21	1920	28.35
			8,992.85	³ 1916	24.67

¹ Covers both freight and passenger traffic, except at the New Orleans-Algiers crossing, where freight only is handled.

² Includes both crossings of the Southern Pacific at this point.

³ Fiscal year

We reopened the case for further hearing and instructed respondents to submit computations which would indicate the approximate cost per ton and per car of handling freight over the various crossings during 1921. This determination includes two operations. The proportion and amount of operating expenses and taxes attributable to the ferry transfer service must be ascertained. As both freight and passengers are carried on the ferries, the ascertained amount must be segregated as between freight and passenger service. By dividing the result for freight service by the respective numbers of tons and of cars of freight transported by ferry, the average cost of the service per ton and per car may be reached.

RESULTS OF COST STUDIES SUBMITTED BY CARRIERS

The property used in transfer service at each crossing comprises the car ferries and the facilities on each side of the river required to move cars to and from the ferries.

In determining the transfer-service expense respondents first segregated all expenses incurred solely in such service. At the Vicksburg, Natchez, Angola, and Texas & Pacific New Orleans crossings the floating equipment is owned by separately incorporated companies controlled by the rail carriers. At the other crossings the rail carriers themselves operate the floating equipment. In both cases the principal expenses of the car ferries are kept separately and were assigned directly to the cost of transfer service.

Expenses common to transfer service and other service were allocated by respondents according to different methods. At the Avondale-Harahan and New Orleans-Algiers crossings of the Southern Pacific, the individual items of common expense were separately allocated. The maintenance expense per mile of all tracks within

the New Orleans terminal was used as a basis for estimating the expense of maintaining the tracks at Avondale considered essential to the Avondale-Harahan transfer. Repairs to locomotives, fuel, water, and other supplies used in transfer service were based on the average expense per engine-hour for locomotives engaged in the New Orleans terminal over a period of a year. Repairs to freight-train and passenger-train cars incident to the transfer service were estimated on a time-detention basis. The estimated expense per hour was applied to estimates for detention of 12 hours in case of freight cars and 40 minutes in case of passenger cars. This item aggregated \$78,589.41, or about 10 per cent of the total expense of operating these two crossings.

At the Vicksburg crossing the common expenses were allocated as between transfer and other service according to the estimated time that switch engines were engaged in each of those services. The engine-time estimate was based upon a four-day test. At the Natchez and Baton Rouge crossings common expenses were apportioned on the basis of the relation between cars handled over the crossing to total cars handled. From the total so ascertained for transfer service for the Natchez crossing a deduction based upon estimated costs of the Missouri Pacific in Louisiana was made to cover terminal and station service. Common rail expenses generally at the New Orleans-Gouldsboro crossing of the Texas & Pacific were allocated to the transfer service on the basis of the percentage which the estimated switching locomotive-miles incident to transfer service bore to the total switching locomotive-miles of the New Orleans-Gouldsboro terminals during 1921.

The Angola-Naples crossing differs from the others in that the line of the Louisiana Railroad & Navigation Company does not terminate at the Mississippi River, but extends to New Orleans on the east and to Shreveport, La., on the west, and the 9-mile crossing is merely a break in the continuity of a single division. Angola and Naples are places of no commercial importance. The location of terminal yards and facilities at these points is due almost exclusively to the river transfer. Therefore the entire expense of operating these terminal facilities was assigned to the transfer service. The rail carrier pays a fixed sum per car to the Angola Transfer Company, which owns and operates the floating equipment at this crossing, and this sum was assigned to the transfer service. The amount paid was \$14,039.84 less than the actual expenses of the Angola Transfer Company, whose operations resulted in a deficit of that amount, guaranteed by the rail carrier.

Respondents in conference with a representative of this commission assigned for that purpose agreed upon a formula for the

separation of the crossing expenses as between freight and passenger services, which was adhered to except in minor instances. This formula allocated common expenses on the following bases:

EXPENSES

A. Repairs, renewals, and insurance of roadway, tracks, and bridges, including inclines and trestles; car inspection; superintendence, stationery, and use of tools; maintenance of way and structures, transportation (yard) expenses.

B. Switching expenses, including repairs, renewals, depreciation, and insurance of switching locomotives and cars in train service, wages of engine-men and trainmen, and other locomotive and train expenses incurred during detention incident to crossing service; superintendence, stationery, and use of tools; maintenance of equipment (rolling stock).

C. Repairs, renewals, depreciation of floating equipment; wages of crews, fuel, supplies, and special towing of floating equipment; repairs, renewals, and insurance of locomotives and cars in train service; wages of engine-men and trainmen and other expenses of trains during crossing detention; superintendence, stationery, and use of tools; maintenance of equipment (floating equipment), transportation (ferry expenses).

D. Superintendence, stationery, and use of tools; general and traffic expenses.

E. Casualties and miscellaneous.

BASIS OF SEPARATION AS BETWEEN
FREIGHT AND PASSENGER

A. Ratio of freight and passenger cars handled, each passenger car being considered equivalent to 1.5 freight cars, and each locomotive being considered equivalent to three freight cars.¹

B. Ratio of freight and passenger switching locomotive miles (determined from seven-day test, except at Angola-Naples where the data necessary were available from existing records).

C. Ratio of freight and passenger proportions of the total number of trips made by floating equipment in transfer service.

D. Freight and passenger proportions of all other expenses assigned to transfer service.

E. (a) If in connection with a particular facility, apportion to classes of service on the basis of the maintenance or operation expenses, according to the nature of the casualty or expense, using the apportioned similar expenses of the facility involved, exclusive of all overhead expense.

(b) If common to all of the crossing facilities, apportion according to the apportionment of the total similar operating expenses of the crossing, exclusive of overhead expenses.

By the foregoing methods of allocation and assignment, respondents estimated the cost of operating the transfer service at each of the crossings during 1921. They also introduced in evidence statistics of tonnage and loaded and empty cars moved over each of the transfers during the same year. In the subjoined statement these figures have been consolidated to show the equivalent of the transfer expense in operated road mileage, and the cost per ton and per car of freight transferred:

¹ At Natchez, owing to the use of small, light, wooden passenger cars, each passenger car was considered equivalent to one freight car.

	New Orleans-Gouldsboro (T. & P.)	North Baton Rouge Anchorage (N. O. T. & M.)	Angola-Naples (L. R. & N. Co.)	Natchez-Vidalia (Mo. Pac.)	Vicksburg-Delta Point (V. S. & P.)	Harahan-Avondale New Orleans-Algiers (M. L. & T.)
Factors used:						
Traffic handled—						
Freight cars, loaded and empty.....	124,816	85,407	37,706	23,324	66,647	142,248
Freight cars, loaded....	93,102	57,586	23,233	14,399	41,455	86,949
Freight tonnage.....	1,925,419	1,493,180	518,996	300,471	1,065,308	1,946,467
Freight cost of operating transfer service.....	\$216,762.35	\$241,073.37	\$261,464.43	\$125,735.47	\$342,923.50	\$520,257.53
Freight operating expenses per mile of road (excluding transfer service).....	¹ \$9,841.28	² \$5,839.93	³ \$6,390.81	⁴ \$6,541.47	⁵ \$11,953.84	⁶ \$14,917.38
Results attained:						
Mileage equivalent of cost of operating transfers in freight service.....	22.02	41.30	40.91	19.20	25.90	34.88
Average cost of transfer service per freight car, loaded and empty.....	\$1.74	\$2.82	\$6.93	\$5.39	\$5.14	\$3.65
Average cost of transfer service per loaded freight car.....	\$2.33	\$4.13	\$11.25	\$8.77	\$8.27	\$5.98
Average cost of freight transfer service per ton.....	\$0.113	\$0.161	\$0.504	\$0.418	\$0.322	\$0.267

¹ Includes Texas & Pacific mileage and mileage of Missouri Pacific in Louisiana and Arkansas.

² Includes entire mileage of New Orleans, Texas & Mexico.

³ Includes entire mileage of Louisiana Railway & Navigation Company.

⁴ Includes Missouri Pacific mileage in Louisiana, exclusive of line operated jointly with Texas & Pacific.

⁵ Includes entire mileage of Vicksburg, Shreveport & Pacific.

⁶ Includes entire mileage of Morgan's Louisiana & Texas Railroad & Steamship Company.

DISCUSSION OF THE COST STUDIES

The wide variation in the cost per ton of transferring freight at the different crossings disclosed above can be accounted for in part by differences in operating conditions. The highest cost is at the Angola-Naples crossing, where the total ferry haul of about 9 miles includes not only a crossing of the Mississippi, but a movement up the Red River for a considerable distance. The channel of the Red River is crooked and narrow at low water, and much of the cost is due to this part of the service. At Natchez the river bank is very high, and the high cost at that point is due partially to the difficulty of moving cars to and from the ferries. In *Natchez Chamber of Commerce v. L. & A. Ry. Co.*, 59 I. C. C. 678, 681, we described this ferry and the manner of its operation. The distance from the Natchez & Southern yard at Natchez to the ferry incline is in excess of 2 miles, and two switchbacks are necessary in the descent to the river. At Vidalia, opposite Natchez, the river bank is much lower, and the Missouri Pacific yard is nearer the ferry incline. The floating equipment at this crossing consists of an old wooden barge, with one track, capable of transporting but six freight cars, which is moved from bank to bank by a tug. The number of cars ferried per trip at this crossing is much less than at

any other crossing, which increases the cost of the transfer service materially.

At Vicksburg the river bank is high, which necessitates a heavy ascending grade from the ferry incline to the yard of the Alabama & Vicksburg, about 1.5 miles. Opposite at Delta Point the bank is lower, and the yard of the Vicksburg, Shreveport & Pacific is nearer the incline. The heavy grade on the east bank limits the number of cars which can be handled by an engine from the ferry to the yard, and results in numerous switch movements. Modern steel self-propelled barges are used to ferry cars. Ordinarily one barge is kept in service, and the other is held for emergencies. The physical conditions at this crossing are such as to produce higher average costs than those at lower crossings where the river banks are low and there is less variation between high and low water.

The line of the New Orleans, Texas & Mexico, hereinafter referred to as the Mexico, ends at the ferry incline on the west bank of the river, but that carrier owns and operates the ferry transfer across the river. The Mexico pays the Yazoo & Mississippi Valley, hereinafter termed the Mississippi Valley, for the movement of cars between the east-bank incline and North Baton Rouge, La., a distance of about 1.5 miles. Freight cars of the Mexico and the Southern Pacific pass over this crossing. The cars of both carriers were included in the cost study. Physical conditions are favorable at this crossing. The river banks are low and the distance from incline to incline is less than a mile. A modern steel self-propelled boat, accommodating 14 freight cars or 8 passenger cars, is utilized in the ferry service. Anchorage is a division point for both the Mexico and the Southern Pacific. The Mexico, having no terminals at Baton Rouge, performs switching at Anchorage for itself and its joint tenant, the Southern Pacific, in the way of making up and breaking up trains, classifying and interchanging cars, which seemingly would be necessary if there were no river crossing. Respondents insist that Anchorage is of no commercial importance, and claim that but for the ferry there would be no necessity for having any make-up and break-up yard at that place. In the cost study they therefore allocated 97.85 per cent of switching expenses at Anchorage to the transfer service. This allocation may be contrasted with the payments of the Mexico to the Mississippi Valley for the east-bank service. The service of the Mexico to and from the ferry on the Anchorage side of the river is fairly comparable with that of the Mississippi Valley to and from the ferry on the North Baton Rouge side. Of the aggregate amount reached by the Mexico as the cost of the freight-transfer service, \$109,236.68 represents expenses for maintenance of way and structures, maintenance

nance of equipment, and transportation at Anchorage, not including any amount for similar expenses in connection with facilities on the inclines or the ferry boat. As contrasted with this figure, the total freight-transfer cost also includes an item of \$19,272.32, which is described as "amount paid Y. & M. V. R. R. for handling ferried cars on east bank of river." The full sum paid the Mississippi Valley for the east-bank switching during 1921 was \$45,410. Compared with the latter figure, the corresponding amount of \$109,236.68 for the west-bank service appears somewhat high.

The Southern Pacific operates two crossings of the Mississippi River in reaching its freight and passenger terminals in New Orleans. The movement at the upper crossing, about 10 miles above New Orleans, is between Harahan and Avondale. The movement at the lower crossing is between New Orleans and Algiers. The physical conditions at these crossings are favorable for a low operating cost. The high costs reflected by the results of the cost study are thought to be due principally to methods of operation, the character of the traffic, the nature of the ferry facilities, and the improper inclusion of certain expenses in the freight-transfer costs.

The Harahan-Avondale crossing is used principally for the transfer of passenger trains. During 1921, 32,054 passenger cars and 30,555 freight cars were moved over this transfer. The separation of the transfer expenses of this crossing for 1921 as between freight and passenger service produced the following results: Passenger, \$374,402.43; freight, \$124,359.65. Expedited passenger service requires faster, more powerful boats than are necessary for freight service. The floating equipment consists of a steel barge capable of accommodating 22 freight cars or 11 passenger cars, propelled by two tugs. Two additional relief tugs are kept at Avondale. The greater part of the freight service is performed between 1 and 5 o'clock in the morning, frequently necessitating detention of freight cars until the passenger-train needs are served. These factors, while attributable directly to passenger service, tend to increase the cost of the freight service.

The New Orleans-Algiers crossing is used 24 hours a day exclusively for freight cars. The transfer boat is self-propelled and accommodates 12 freight cars. The freight movement over this crossing is much greater than that at any other, except that of the Texas & Pacific between New Orleans and Gouldsboro, where the transfer boat is much larger. Between 3 and 8 o'clock p. m. the ferry is restricted to westbound business. Between midnight and 8 o'clock a. m. it is used only in the movement of eastbound traffic to the New Orleans market. Such restrictions necessarily increase

the cost of the service. Cars intended for movement in the opposite direction are held up during these periods of one-way traffic. Evidently such restrictions of traffic are necessitated by the inadequacy of the transfer boat.

The switching expense included in the transfer cost at the New Orleans-Algiers crossing appears excessive. In the cost study 17,520 switch-engine hours were assigned to that crossing, which ferried 111,693 freight cars, at the rate of 6.38 cars per engine-hour. As the capacity of the ferry boat is 12 cars, this means that nearly two hours were consumed in handling 12 cars, or one load between the yards and the boat. The switching outlay of the Texas & Pacific crossing between New Orleans and Gouldsboro appears similar to that at the New Orleans-Algiers crossing. At the former crossing switch engines work on the basis of 18 hours per day expressed in terms of one engine, of which 73.3 per cent is considered to be chargeable to freight service. On this basis the total switching-locomotive hours for freight service in 1921 was 4,815.81. As a total of 124,816 freight cars were moved over that crossing in that year, they were handled at the rate of 25.92 cars per engine-hour, as compared with 6.38 at the New Orleans-Algiers crossing. The Texas & Pacific figures include the costs of no switching beyond the top of the two river inclines.

More than 10 per cent of the estimated freight ferry costs of the two transfers of the Southern Pacific consists of the repairs to freight cars during their detention in transfer service, estimated by applying the average expense per hour of repairing freight cars on the Southern Pacific lines east of El Paso, Tex., to an assumed detention of 12 hours per car at both crossings. The 12-hour estimate was made by the superintendent of terminals of the Southern Pacific at New Orleans, and is unsupported by tests. The time required to move freight cars over the Harahan-Avondale crossing is 19 minutes from incline to incline. At the New Orleans-Algiers crossing the time can not be much greater. We have stated that the detention of freight cars is due to the passenger movement at the Harahan-Avondale crossing, and to the inadequacy of the ferry facilities at the New Orleans-Algiers crossing, which necessitates one-way traffic during certain hours. Respondents contend that all this delay should be considered, as there would be no delay except for the necessity of crossing the river. If freight-car repairs are to be included in the transfer costs, which has not been done at other crossings, no allowance should be made for detention except during the period of time that cars are being switched to and from the ferry inclines and while they are being transported on the ferry boats. If this basis were used, the total detention should not exceed one hour per car.

At the Texas & Pacific crossing between New Orleans and Gouldsboro the ferry service is performed by a modern steel self-propelled boat, having three tracks, with a capacity of 17 freight cars or 8 passenger cars. The Missouri Pacific also uses this crossing, and its cars are included in the cost study. The conditions at this crossing, as at the New Orleans-Algiers and North Baton Rouge-Anchorage crossings, are favorable for a low operating cost for freight movement.

ROAD MILEAGE EQUIVALENT OF FREIGHT SERVICE AT CROSSINGS

Respondents have directed their efforts to show that the individual crossing costs are equivalent to the actual expense of operating 20 or more miles of railroad. Controversy has arisen as to the railroad lines or parts of lines which should be selected for this comparison, as the mileage equivalent varies directly as the expense per mile on different roads or parts of roads is high or low. The freight operating expense per mile of road of the Mexico was \$5,839.93 in 1921. The application of this figure to the freight-transfer cost of the North Baton Rouge-Anchorage crossing for 1921 produces a freight-mileage equivalent of 41.3. Freight cars of the Southern Pacific also move over this crossing. If the combined freight operating expenses per mile of road of the Mexico and Southern Pacific (M. L. & T. only, which was used at other Southern Pacific crossings) for the same year are applied to the same transfer cost, the freight-mileage equivalent becomes 20.11. The combined freight-transfer costs of the two New Orleans crossings of the Southern Pacific produce mileage equivalents of 34.88 on basis of the freight operating expenses per mile of Morgan's Louisiana & Texas, and 37.79 on basis of the combined freight operating expenses per mile of the two Southern Pacific lines, viz, Morgan's Louisiana & Texas and the Louisiana Western. If these two crossings are taken separately, mileage equivalents of 8.34 for the Harahan-Avondale crossing and 26.54 for the New Orleans-Algiers crossing result from the use of the expense per mile of Morgan's Louisiana & Texas. Conditions at the North Baton Rouge-Anchorage, New Orleans-Algiers, and New Orleans-Gouldsboro crossings are fairly comparable. But the expense per mile of road used in obtaining the transfer equivalent varies as follows: North Baton Rouge-Anchorage, \$5,839.93; New Orleans-Algiers, \$14,917.38; and New Orleans-Gouldsboro, \$9,841.26. Respondents, however, point out that the portions of each road used in determining the cost per mile of operating are the very portions of the respective roads which are affected by the 20 mile allowance. They therefore insist that, in determining the expense of operating the river transfer, it is logical and reasonable to express it in terms of the cost per mile of operation of the individual roads located within the territory affected by the allow-

ance, which costs reflect the operating conditions on the respective roads.

The use of the mileage-equivalent theory produces variable amounts, when applied in determining the rates as between different destinations in Louisiana where the mileage differs. This is illustrated by the following comparison of mileage rates, by classes, from Vicksburg and Delta Point:¹

	Distance	1	2	3	4	5	A	B	C	D	E
	<i>Miles</i>	<i>Cents</i>	<i>Cents</i>	<i>Cents</i>	<i>Cents</i>	<i>Cents</i>	<i>Cents</i>	<i>Cents</i>	<i>Cents</i>	<i>Cents</i>	<i>Cents</i>
Vicksburg to Mound.....	26.1	51½	44	36	30½	25½	27	20½	19	15½	13
Delta Point to Mound.....	6.1	39	32½	27	23½	17	17	13½	12	10	9
Difference.....		12½	11½	9	7	8½	10	7	7	5½	4
Vicksburg to Waverly.....	49.77	61½	52½	43½	37	29½	31	24½	21	19	15½
Delta Point to Waverly.....	29.77	51½	44	36	30½	25½	27	20½	19	15½	13
Difference.....		10	8½	7½	6½	4	4	4	2	3½	2½
Vicksburg to Girard.....	73.3	74½	63½	52½	44½	36	39	29½	26½	22½	19½
Delta Point to Girard.....	53.3	54	54	44½	39	30½	32½	25½	22½	19½	16
Difference.....		10½	9½	8	5½	5½	6½	4	4	3	3½
Vicksburg to Cheniere.....	99.33	87	73½	61	52½	41	46	34½	30½	26½	22½
Delta Point to Cheniere.....	79.33	77	65	54	46½	37	40	30½	27	23	19
Difference.....		10	8½	7	6	4	6	4	3½	3½	3½
Vicksburg to Grambling.....	127.11	102	87	71½	61½	49½	53½	40½	36	30½	25½
Delta Point to Grambling.....	107.11	92	77½	64	54½	44	47½	37	32½	27½	23
Difference.....		10	9½	7½	7	5½	6	3½	3½	3	2½
Vicksburg to Nelson.....	150.8	117	98½	81	70	56	61	49½	40½	34½	29
Delta Point to Nelson.....	130.8	104½	90	73½	63	50½	54	42½	36½	31	26½
Difference.....		12½	8½	7½	7	5½	7	4	4	3½	2½
Vicksburg to Wadley.....	170.84	123½	104½	86½	74½	59½	64	49½	43	37	30½
Delta Point to Wadley.....	150.84	117	98½	81	70	56	61	46½	40½	34½	29
Difference.....		6½	6	5½	4½	3½	3	3	2½	2½	1½
Vicksburg to Shreveport.....	187.65	127	108	88½	76½	61	66	50½	44	38	31
Delta Point to Shreveport.....	167.65	120	101½	83½	71½	57½	63	48	41	36½	29½
Difference.....		7	6½	5	5	3½	3	2½	3	1½	1½

The differences shown are the added amounts which result from the application of the mileage allowance. The unequal character of the allowance as applied to individual rates for varying distances is apparent. The greater proportion of the tonnage of commodities transferred at the various crossings during 1921 moves under fifth-class rates. The allowance produces factors of the fifth-class rates as follows to the points shown: Mound, 26.1 miles, 8.5 cents; Waverly, 49.77 miles, 4 cents; Girard, 73.3 miles, 5.5 cents; Cheniere, 99.33 miles, 4 cents; Grambling, 127.11 miles, 5.5 cents; Nelson, 150.8 miles, 5.5 cents; Wadley, 170.84 miles, 3.5 cents; and Shreveport, 187.65 miles, 3.5 cents. These are not isolated instances.

The position of some of the parties has varied during the hearing. They agree that whatever form of charge is determined upon should be made uniform at all of the crossings. The Natchez Chamber of Commerce urges particularly that the addition of a mileage allow-

¹ Rates are stated in this report in cents per 100 pounds, unless otherwise indicated.
93 I. C. C.

ance or other form of charge for the crossing service on traffic moving from Natchez to Louisiana points under distance rates is unduly prejudicial to Natchez and its traffic, in view of the fact that no similar charge is made in connection with through traffic. Respondents assert that while no published charges are made in connection with through rates, the expense of the crossing service is given consideration in the divisions of such rates. We have already stated the position of the New Orleans interests. The Monroe Traffic Bureau and the Chambers of Commerce of Shreveport and Alexandria, all in Louisiana, oppose any change in the present allowance. These points compete with Vicksburg and Natchez in northern Louisiana territory. Their position undoubtedly is influenced by the fact that any reduction in crossing charges would redound to the advantage of their east-bank competitors, to their corresponding disadvantage in jobbing to points in northern Louisiana. The Louisiana commission asks that the following ferry tolls be approved for the river-crossing service:

Classes-----	1	2	3	4	5	A	B	C	D	E
Ferry tolls (cents)-----	3	3	3	2	2	2	1	1	½	½

Respondents themselves are not unitedly of the opinion that the mileage allowance should be retained. The Vicksburg, Shreveport & Pacific takes the position that fixed arbitraries for the ferry service would be more defensible. They point to the arbitraries received by respondents in dividing joint rates for the service across the Mississippi River, and suggest that they be made the measure of what would be reasonable. These arbitraries, which accrue to respondents before prorating, are as follows:

Classes-----	1	2	3	4	5	A	B	C	D	E
Cents-----	6.5	6.5	6.5	6.5	4.5	4.5	4.5	4.5	3	3

The Memphis bridge tolls for the same classes are:

Classes-----	1	2	3	4	5	A	B	C	D	E
Cents-----	5	5	5	3	3	3	2.5	2.5	2.5	2.5

The total freight cost of operating the ferry transfer service in 1921, as indicated by the record, was not substantially less than \$1,700,000, since the items of cost herein criticized aggregate but about 16 per cent of the total cost. During 1921 6,909,885 tons of freight moved over all the crossings. This was approximately the same as the average during the five-year period ended with 1921. Practically 90 per cent of the 1921 tonnage was of commodities rated fifth class or lower in the western classification. More than one-third of it was of commodities rated fifth class. There is no evidence of record as to the tonnage, or the distribution of that tonnage by classes since 1921. To destinations up to 130 miles the

present 20-mile allowance results in varying arbitraries at different destinations ranging from 4 to 8.5 cents fifth class, 4 to 10 cents class A, 3.5 to 7 cents class B, 2 to 7 cents class C, 3 to 5.5 cents class D, and 2.5 to 4 cents class E.

Whether, as a matter of rate making, in the construction of through rates on the distance-scale basis, an allowance of a given number of miles should be made, or arbitraries in cents per 100 pounds be added to the rate computed on the basis of strict mileage, is incapable of mathematical demonstration. We have mentioned certain weaknesses of the mileage-allowance theory.

To establish tolls on the basis of the cost per ton of the ferry transfer is also difficult. Taking extreme cases, this cost is about five times as much at one crossing as at another. In some respects, and, as applied in particular instances, whichever basis is selected will be vulnerable to criticism as opposed to accepted tenets of rate making. The choice is one of administrative discretion. Uniformity as between these crossings is desirable, better to equalize the competitive conditions between them and between the carriers which reach them. If the matter had been long in repose, resting upon our former decisions, that fact would be entitled to much weight. But our previous decisions have not been founded upon an inquiry as wide in scope or a record as detailed as this, and our former findings do not embarrass or control our present determination. The contention that no mileage allowance or arbitraries whatever should be added for the service in question has been disposed of. Considerations both of the cost of the particular services and the value thereof to the shipper lead to the conclusion that the additional cost should be borne, as nearly as may be, by the traffic accommodated, and not be imposed upon shippers elsewhere whose traffic is carried under less costly circumstances. The whole record considered, we are of the opinion that the method of employing arbitraries is more reasonable, and less likely to result in undue or unreasonable prejudice or disadvantages to persons, localities, or descriptions of traffic, than the method now employed of adding 20 constructive miles to the actual distance.

We find that for the transfer service at Mississippi River crossings the addition of 20 constructive miles to the distances from Delta Point, Vidalia, Naples, Anchorage, Avondale, Algiers, and Goulsboro, La., in determining interstate distance class and commodity rates to and from Vicksburg and Natchez, Miss., Angola, North Baton Rouge, Harahan, and New Orleans, La., is, and for the future will be, unjust and unreasonable, and, as applied in particular cases, results and will result in undue prejudice and that, for the future, in lieu thereof, the following ferry tolls will be reasonable

and nonprejudicial for use in connection with such interstate traffic, to be added to the distance rates from and to the west-bank points:

Classes-----	1	2	3	4	5	A	B	C	D	E
Ferry tolls (cents)-----	6.5	5	4	3	3	3	2.5	2.5	2.5	2.5

The above ferry tolls will be applied according to ratings in the western classification or exceptions thereto, when traffic moves from and to west-bank points under class distance rates. Under commodity distance rates, and where no specific rating is provided by the western classification, or exceptions thereto, the ferry toll should be approximately the same as the toll on the class to which the rate on the commodity more nearly corresponds. For example, if the scale of rates on a given commodity is approximately the same as the class C rates under the class-rate scale, the ferry toll should not exceed the ferry toll for that class.

In the *Memphis-Southwestern Investigation*, 55 I. C. C. 515,553, in considering the class rates from Natchez to points in Arkansas, we said:

The additional charges for the river crossing shall be determined by adding to the actual distances not more than 20 constructive miles, which rates so made we find to be reasonable maximum rates.

The method of adding arbitraries to the distance rates from and to the west-bank points will have the effect of somewhat reducing these Natchez rates, and the scale of arbitraries prescribed is somewhat higher than it would be if the distance rates were applied on the basis of the mileage for the total distance, including the approaches and river crossing in each case, instead of merely to or from the west-bank point.

We will enter appropriate orders.

HALL, *Chairman*, concurring:

Constructive mileage has the infirmities of fiction when used to replace fact. The real distance is a fact, and every mile of it is reflected in corresponding, although not identical, outlay for fuel, upkeep, wages, and the like. That outlay varies per mile with grade, for example, but it is fairly constant for that mile, irrespective of how many miles go into the total haul. The 20 constructive miles represent the same crossing service, but result in charges therefor which vary with the length of the rest of the haul. If the haul is short and the scale closely graded, the 20 constructive miles may increase the rate by a large percentage. If the haul is long and the scale has widened out in its successive steps, the 20 constructive miles may add nothing to the rate. The fallacy lies in trying to state money in terms of miles. The same number of constructive miles is used in each case and that gives a semblance

of fairness to everybody. But when translated into money it means much in one case and little or nothing in another. If addition of a bridge charge or crossing charge to the line-haul rate is proper at all, it seems to me that it should be the same in all cases to the extent that it represents the same service. Here we add arbitraries to the west-bank mileage. Although I concur in the report, I should prefer use of the real distance from origin to destination, together with a smaller arbitrary which, on the average, would faithfully reflect the extra service rendered in moving cars across a great river instead of on land.

COMMISSIONER CAMPBELL did not participate in the disposition of this case.

McMANAMY, *Commissioner*, dissenting:

I disagree with the conclusions of the majority that an additional charge should be made for the river crossings.

The practice of adding either an allowance of 20 constructive miles or a fixed arbitrary to the rates for each section of line where construction or operating costs are high is not sound in principle and should be abolished entirely. The river-transfer charge should be taken care of out of the line-haul rates in the same manner as the expense for operating any piece of expensive track, bridge, ferry, trestle, or tunnel along the carrier's line. The facilities for crossing the river are merely parts of the carrier's line between eastern and western points.

The cost of crossing the river here only represents a condition which exists at many places throughout the country where there are equally as great transportation difficulties to overcome. Where such conditions exist, it is not the usual practice to add an extra charge to the line-haul rates but to include the expense of operation as a part of the line-haul rates. Numerous illustrations appear in the record. For example, there is no provision for extra charges over and above the through rates for the car ferries for much greater distances across the bay at San Francisco, Calif. The causeway connecting Galveston, Tex., with the mainland is another instance of an unusual and expensive piece of construction yet distance rates apply without the addition of arbitraries or mileage allowances. Many other similar instances could be given where, as a rule, no extra charge is made.

If it is proper for the carriers to make separate charges here the same principle would permit them to assess additional charges elsewhere for any unusual expense in construction or operation. Such a principle carried to its logical conclusion would result in the rates

being divided into sections to accord with each variation in cost of construction or operation. This would result in a haphazard and illogical rate adjustment which would be impractical. Different portions of a carrier's line can not be segregated in this manner and expenses and earnings charged and credited to each portion.

The 1 mile across the Mississippi River is an integral part of the carrier's main line from points east of the river to points west, and is just as essential in handling traffic as any other mile of main line. It is not consistent to treat the crossings as separate and distinct portions of the carrier's line for the purpose of making separate charges merely because there is a somewhat greater expense involved unless this practice is also followed in all cases to meet variations in the cost of construction or operation. The expense is simply an incident to the operation of the through line of railway and whatever additional cost is encountered should be spread over the total cost of conducting the transportation.

93 I. C. C.

HORSE AND MULE RATES IN THE SOUTHWEST, 1924

No. 12358¹TEXAS LIVESTOCK SHIPPERS PROTECTIVE LEAGUE
ET AL *v.* DIRECTOR GENERAL, AS AGENT, ABILENE &
SOUTHERN RAILWAY COMPANY, ET AL.

Submitted November 10, 1924. Decided November 10, 1924

1. Rates on horses and mules, in carloads, between Fort Worth, Tex., and points in Kansas and Missouri found not unreasonable in the past except that through rates higher than the aggregate of intermediate rates found to that extent unreasonable. Reparation awarded.
2. Rates on horses and mules, in carloads, between Fort Worth, Tex., and points in Arkansas, Kansas, Oklahoma, western Louisiana, southern Missouri, portions of Colorado and New Mexico, and in Texas other than in differential territory found unreasonable for the future, and rates on such traffic between Fort Worth and points in New Mexico, Texas differential territory, and in the territory first described found unduly prejudicial for the future.
3. Upon further consideration of *Wichita Board of Commerce v. Director General*, 60 I. C. C. 536, *Horses and Mules from Kansas City, Mo.*, 69 I. C. C. 97, and *Kansas City Chamber of Commerce v. A. & W. Ry. Co.*, 89 I. C. C. 22, previous findings modified by finding the rates on horses and mules, in carloads, from Wichita, Kans., and Kansas City, Mo., to destinations in Arkansas and in certain portions of Louisiana and Texas unreasonable and unduly prejudicial for the future.
4. Reasonable bases of rates prescribed and undue prejudice ordered removed.
5. Fourth-section relief granted defendants and respondents to apply over all routes between Fort Worth, Tex., Wichita, Kans., Kansas City, St. Joseph, and St. Louis, Mo., and Oklahoma City, Okla., and points in the territory considered herein the lowest rate available over any route under the scales prescribed, and to maintain rates at intermediate points not exceeding the rates named in the aforesaid scales, under the conditions set forth in the report. Other fourth-section relief denied.

¹ This report also embraces No. 11018, *Wichita Board of Commerce et al. v. Director General, as Agent, Alexandria & Western Railway Company, et al.*; Investigation and Suspension Docket No. 1483, *Horses and Mules from Kansas City, Mo., and Wichita, Kans., to New Orleans, La., Memphis, Tenn., and other points*; No. 13001, *Chamber of Commerce of Kansas City, Mo., v. Alexandria & Western Railway Company et al.*; No. 13619, *Ross Brothers Horse & Mule Company et al. v. Union Pacific Railroad Company et al.*; No. 13627, *Burnett-Yount Horse & Mule Company et al. v. Abilene & Southern Railway Company et al.*, and Portions of Fourth-Section Applications Nos. 461, 462, 621, 673, and 678.

B. D. Pelton, A. J. Scrivner, W. P. Huston, and J. H. Tedrow for complainants.

T. J. Norton, F. E. Andrews, F. J. Wren, H. L. Walker, J. A. Lynch, F. A. Swenson, J. M. Strupper, M. J. Dowlin, A. T. Witcher, W. B. Plumb, C. D. Arnold, F. B. Clark, A. B. Enoch, J. A. LaCoste, M. G. Roberts, Robert N. Nash, Eugene Mock, and George D. Walp for defendants and respondents.

John F. Finerty and Alex M. Bull for Director General of Railroads, as agent.

J. H. Tedrow, J. G. Cruise, and George T. Bell for Chamber of Commerce of Kansas City, protestant.

REPORT OF THE COMMISSION

AITCHISON, *Commissioner*:

Each of the several cases covered by this report brings in question the lawfulness and propriety of some phase of the rate structure in the Southwest applicable to the interstate transportation of carload shipments of horses and mules. Nos. 12358, 13619, and 13627, for convenience termed the Fort Worth cases, cover rates to and from Fort Worth, Tex., from and to practically the entire Southwest and some additional territory. These cases have been submitted on argument following exceptions by complainants and defendants to the examiner's proposed report. The Wichita-Kansas City cases, *Wichita Board of Commerce v. Director General*, 60 I. C. C. 536, *Horses and Mules from Kansas City, Mo.*, 69 I. C. C. 97, and *Kansas City Chamber of Commerce v. A. & W. Ry. Co.*, 89 I. C. C. 22, are reopened proceedings covering rates chiefly to points in Arkansas, Louisiana, and Texas. Although their territorial scope is narrower than that of the Fort Worth cases, they are directly related in rate structure and need uniform treatment. The actual hauls under the rates involved in this report are not less than 100 miles in length.

THE FORT WORTH CASES

The Texas Live Stock Shippers Protective League, an unincorporated association of livestock dealers at Fort Worth, brings the complaint in No. 12358 on behalf of numerous horse and mule dealers located at various points in the Southwest, who are also named as complainants. In Nos. 13619 and 13627, the complainants are numerous horse and mule dealers. The complaints in Nos. 12358 and 13619 allege that since January 1, 1917, the carload rates on horses and mules between Fort Worth and points in southwestern and western territories have been and are unreasonable, unjustly discriminatory, unduly prejudicial, and in violation of the aggregate-of-intermediates provision of the fourth section of the interstate commerce

act. They also allege that the lower intrastate rates within and the lower interstate rates between the States of Arkansas, Kansas, Louisiana, Oklahoma, New Mexico, Nebraska, Colorado, and Arizona are unduly prejudicial to Fort Worth shippers and preferential of shippers within those States. In No. 13627, by complaint filed March 4, 1922, as amended, complainants attack the rates since February 28, 1920, between points in Texas and points in the States of Louisiana, Arkansas, Oklahoma, Kansas, Missouri, Iowa, Illinois, Nebraska, Wyoming, Colorado, New Mexico, Arizona, and California, also Memphis, Tenn., Vicksburg, and Natchez, Miss., as being unreasonable, unjustly discriminatory, and unduly prejudicial. They also allege violations of the aggregate-of-intermediates provision and the long-and-short-haul clause. The complainants pray for an order prescribing reasonable and nonprejudicial rates for the future and awarding reparation. Subsequent to the filing of the original complaints several hundred other horse and mule dealers intervened in Nos. 12358 and 13627 to ask for reparation on shipments made since Federal control.

Although the allegations are sweeping in their extent, the evidence was confined principally to the rates between Fort Worth and points in Louisiana, Arkansas, Oklahoma, Missouri, Kansas, Colorado, and New Mexico. Complainants introduced little evidence respecting the intrastate rates, and as the State authorities of the States concerned were not notified of the proceedings, this report will be confined to the interstate rates.

A large proportion of the horses and mules produced in the United States are raised within the territory covered by the Fort Worth complaints. The estimated average farm value of horses and mules in 1921 was \$82 and \$115, respectively. Horses and mules constitute about 5 per cent of the total livestock traffic to and from the principal Midwest markets in the Southwest which, in the order of importance, are St. Louis, Mo.; Kansas City, Mo.; Wichita, Kans.; Fort Worth; St. Joseph, Mo., and Oklahoma City, Okla. Prior to 1922 Fort Worth was third in importance. From 1915 to 1918, there was an unusually large movement of horses and mules, but since then there has been a marked decrease in shipping and sales, accompanied by a decline in prices. Dealers in Kansas, Oklahoma, Colorado, and New Mexico, and to some extent in other States, ship horses and mules to commission firms at Fort Worth, which sell and reship to purchasers in Arkansas, Louisiana, and the Southeastern States.

Class A rates are generally applicable from points in Kansas, Missouri, and Arkansas to Texas points. Specific commodity rates are in effect from Kansas City, Wichita, and St. Louis to a few destinations in Texas, and also distance commodity rates between Kansas

and points in the western section of Texas, Class A rates obtain to Texas points from Louisiana points west of the Mississippi River, except from the Shreveport, La., group and points taking the Natchez, Miss., rate; from points in the Denver, Colo., group; and from Memphis and Vicksburg. In the reverse direction the rates from Texas points to destinations in the territories above mentioned are commodity rates. Between Texas and Oklahoma distance commodity rates are in effect. Between eastern New Mexico and Texas the rates are combinations on a Texas border point. Between points in western New Mexico and in Arizona and points in Texas the transcontinental rate applies subject to the lowest combination. Between Texas and other points in western territory, rates are made by combinations.

Between points in Missouri and Kansas and points in Oklahoma single-line distance commodity rates apply which alternate with specific commodity rates to or from Kansas City or St. Louis, but as a rule no joint rates are in effect. Single-line distance commodity rates are in effect between Oklahoma and Arkansas. Distance commodity rates prescribed in *Railroad Commission of Louisiana v. A. H. T. Ry. Co.*, 48 I. C. C. 312, as increased (the Shreveport scale), are in effect between points in Texas and between points in Texas and the Shreveport group. In *Natchez Chamber of Commerce v. A. H. T. Ry. Co.*, 52 I. C. C. 558, the Shreveport scale on horses and mules was extended to apply between Texas points and Natchez. In addition there are many other distance scales, specific rates, and group rates in this territory published voluntarily by the various carriers or under State authority.

Complainants contend that the class A rates to Fort Worth are unreasonable in comparison with lower northbound commodity rates; that the distance rates between Texas and Oklahoma are too high; that the combination basis of rates between Texas and points in Arizona, New Mexico, and other western States is unreasonable; and that the adjustment throughout the Southwest is unduly prejudicial to Fort Worth and unduly preferential of other markets. They contend that for distances under 500 miles the horse and mule rates should not exceed those under the Shreveport cattle scale by more than 15 per cent, and that for distances beyond 500 miles this difference should diminish so that over 800 miles they would be equal.

That the class A rates are too high for future general application to horse and mule traffic in the Southwest is not seriously questioned. Defendants themselves propose class B rates for the future. Prior to April, 1917, rates on horses and mules, in carloads, to Texas points were on the class C basis, and the increase to the class A basis at that time advanced the southbound rates approximately 35

per cent. Under General Order No. 28 of the director general, the maximum increase of the commodity rates was 7 cents, while on the class rates the full 25 per cent increase applied. This had the effect of further widening the difference between the northbound and southbound rates. Since 1922 certain of the class A rates to Fort Worth have been reduced to the basis of the lowest combination. Even with such reductions the disparity between the rates to and from Fort Worth is considerable as indicated in the following table:¹

To and from as indicated	From Fort Worth		To Fort Worth	
	Rate ¹	Charge per car	Rate	Charge per car
	<i>Cents</i>		<i>Cents</i>	
Kansas City group.....	75	\$172.50	² 69.5	\$220.35
St. Louis group.....	75	172.50	³ 69.5	267.35
Little Rock-Fort Smith group.....	65.5	150.65	⁴ 102	234.60
Memphis group.....	75	172.50	⁴ 109.5	251.85
New Orleans group.....	75	172.50	¹ 78	179.40
Denver group.....	75	172.50	⁴ 130.5	300.15

¹ Commodity rate.² Plus \$60.50 per car.³ Plus \$107.50 per car.⁴ Class A rate.

Commodity rates substantially lower than the rates from Kansas points to Fort Worth are in effect between Kansas and points in western and southern Texas. A rate of 90.5 cents applies from El Paso and Pecos, Tex., to Kansas City and St. Louis, and the rate is 97 cents in the opposite direction. To Amarillo and several other western Texas points lower rates apply than from the same Kansas points to Fort Worth. A rate per car of \$115.50 is in effect from Kansas City and St. Louis to Shreveport and Texarkana, Tex. To Beaumont, Tex., a rate per car of \$138.50 is in effect from Kansas City. The existence of these lower commodity rates to western and southern Texas points enables dealers at such points to receive horses and mules from the Kansas City market and distribute them throughout Texas at an advantage over the Fort Worth dealers. The class A rates which apply from Kansas through Oklahoma to Texas destinations are much higher than the Kansas-Oklahoma rates for like distances. This results in an abrupt jump in rates immediately south of the Oklahoma-Texas State line. From Kansas City, for example, the rate per car to Colbert, Okla., is \$132; to Denison, Tex., just across the line, the applicable class A

¹ Unless otherwise indicated, rates shown in this report in cents apply per 100 pounds, and those stated in dollars apply per standard car, and except as otherwise indicated all rates named herein reflect the general reductions of 1922. Rates and charges per standard car are based on the minimum weight of 23,000 pounds which prevails throughout the Southwest.

rate results in a charge of \$251.85 per car, an increase of \$119.85 per car for a distance of 8 miles.

The Oklahoma-Texas scale here assailed as unreasonable was originally based on the class A rates prescribed in the *Southwestern Class Case*, 48 I. C. C. 379, and is considerably higher than the Kansas-Oklahoma scale. An instance will illustrate the extent of the disparity. Pauls Valley, Okla., takes rates per car of \$110 from Kansas City, and \$111.55 from Fort Worth. The distance from Fort Worth is 146 miles, and from Kansas City 420 miles. The same relative adjustment exists at other Oklahoma points on the various lines where the rates from both markets become equal but where the distances are much greater from Kansas City than from Fort Worth.

The applicable rates from Kansas points and from some Missouri points to Fort Worth have quite generally in the past exceeded, and in many cases still exceed, the combinations to and from Oklahoma points. This has been due in large part to the application of class A rates higher than the commodity scale rates to Oklahoma. Even with the establishment of commodity rates in lieu of some of the class A rates, the same condition largely obtains at the present time. For example, the class A rate from Kansas City is 109.5 cents, which would yield a revenue per car of \$251.85. The charges per car under the commodity rate made applicable since the hearing are \$220.35. The rate per car from Kansas City to Thackerville, Okla., is \$119.50, and from Thackerville to Fort Worth, \$83.95, a total of \$203.45, or \$16.90 less than the applicable commodity rate. The rate from Omaha, Nebr., made by combination on Kansas City, likewise exceeds the aggregate of the intermediate rates. From points in Kansas City territory and points basing thereon nearly every applicable rate to Fort Worth is in excess of the aggregate of the intermediates. From Fort Scott, Kans., the applicable rate is \$192.05 per car, while combinations on various Oklahoma points are less. The class A rate from Joplin, Mo., to Fort Worth is \$251.85, though there has been in effect since July 1, 1922, a commodity rate of \$183 per car from the same point to North Fort Worth, Tex. Defendants assert that the Kansas-Oklahoma rates, which are factors in most of the combinations, are depressed and for that reason the combination rates are too low. The Oklahoma-Texas rates are plainly too high and the combination rates taken as entireties also appear excessive.

Distance considered, the rates from Fort Worth are materially higher to points in Oklahoma, Arkansas, and Louisiana south of the Shreveport-Natchez section than the rates to the same destina-

tions from Kansas City, St. Louis, or Wichita. The extent of this disparity is indicated in the following rate statement:

To—	From Kansas City		From St. Louis		From Fort Worth		From Wichita	
	Distance	Charge per car	Distance	Charge per car	Distance	Charge per car	Distance	Charge per car
Oklahoma:	<i>Miles</i>		<i>Miles</i>		<i>Miles</i>		<i>Miles</i>	
Ardmore.....	465	\$116.00	643	\$146.50	104	\$100.05	272	\$76.50
Oklahoma City..	344	105.50	542	138.50	205	136.85	171	67.00
Enid.....	321	87.00	550	117.50	270	144.90	98	50.50
Arkansas:								
Little Rock.....	481	107.00	346	98.50	358	150.65	462	107.00
Hope.....	500	142.00	461	115.50	246	150.65	476	121.50
Louisiana:								
New Orleans.....	879	165.00	695	138.00	547	172.50	845	152.00
Georgetown.....	717	133.50	562	131.50	357	109.25	652	133.50

Fort Worth witnesses testify that the keenest competition of commission firms there is with Kansas City and Wichita, and that horse and mule dealers have abandoned the Fort Worth market and have sought other markets where rates are more favorable. Oklahoma and Kansas dealers can ship through the Wichita or the Kansas City market to Arkansas and Louisiana points at less aggregate rates than through Fort Worth for less distances to the same destinations. For example, the rate per car from Guymon, Okla., to Kansas City, 453 miles, is \$97, and from Kansas City to De Ridder, La., 692 miles, is \$128, an aggregate rate of \$225 for a distance of 1,145 miles. The rate per car from Guymon to Fort Worth, 484 miles, is \$251.85, and from Fort Worth to De Ridder, 354 miles, is \$172.50, a total of \$424.35 for 838 miles.

Many inconsistencies exist also in the rates to Louisiana points. The rate from Fort Worth to Shreveport, 222 miles, is 35 cents; to Natchez, 417 miles, 48.5 cents; and to Vicksburg, 395 miles, 62.5 cents. The Natchez rate of 48.5 cents is blanketed to many intermediate points in northern Louisiana. The New Orleans group rate of 75 cents applies to other points in Louisiana, although many are less distant than points taking the Natchez rate.

Rates from New Mexico and Arizona to Fort Worth are combinations of local rates, while lower joint rates are in effect from New Mexico and Arizona points to Wichita, Oklahoma City, and Kansas City. Thus, the rate from Santa Rosa, N. Mex., to Kansas City is \$115.50, to Wichita \$128, and to Fort Worth \$155.50, although the two points last named are approximately equidistant from Santa Rosa.

In further comparison, complainants refer to rates on horses and mules from Kansas City and Wichita to points in Arkansas, 93 I. C. C.

Louisiana, Missouri, Kansas, Oklahoma, New Mexico, and Colorado, and to various distance scales applying within and between the above and other States. As the rates cited herein are typical, it is unnecessary to detail the many inconsistencies which exist in the adjustment.

The carriers recognize the need for a revision of the rates. They ask that we prescribe rates uniform in the Southwest but, because of their financial needs, seek a readjustment so made that their revenues will not be depleted.

Defendants contend that livestock rates are generally too low and do not bear their proper share of transportation costs. Their showing in this regard is similar to that presented by them, with other carriers, in *National Live Stock Shippers' League v. A., T. & S. F. Ry. Co.*, 63 I. C. C. 107, 113-115, and in other general rate cases. They also contend that rates on horses and mules should properly be higher than for cattle, as the movement of horses and mules is light compared with cattle, the average value per car is much greater, and horses and mules are more susceptible to damage in transit. While the records of the carriers do not segregate the claims paid on horses and mules from all livestock, statistics prepared by the Missouri, Kansas & Texas, the St. Louis-San Francisco, and the Chicago, Burlington & Quincy indicate that the ratio of claim payments to revenue earned on horses and mules is somewhat higher than that on cattle.

The defendants take the position that the northbound rates from Fort Worth have been affected by the northbound rates on cattle and are not the proper measure of rates southbound to that market and that the class A rates are not unreasonable. Their proposal of class B rates for the future has been mentioned. Commodity rates on horses and mules from Fort Worth to Kansas City, St. Louis, Memphis, New Orleans, and other territories remained unchanged since 1897 until the general increases in 1918, while class rates and many other commodity rates between those territories and Texas common points were increased in 1908 and 1911. Comparisons, introduced by defendants, of class A rates with numerous rates on other commodities between Kansas City and St. Louis and Texas points are not persuasive as to the reasonableness of class A rates for application to shipments of horses and mules in this territory.

Defendants oppose the extension of the Shreveport scale. For the distances from Kansas City to St. Louis and Chicago the rates under the Shreveport scale would be 39.5 and 48.5 cents, respectively, as compared with the present rates of 30.5 cents and 51.5 cents. The Kansas City-St. Louis rate is not necessarily the measure of a normal rate for that distance in the Southwest because of the general dif-

ferences in density of traffic and population and in rate adjustments. Similar considerations might also dictate a slightly higher rate than 48.5 cents in the Southwest for the distance from Kansas City to Chicago. Under the Shreveport scale the rate for 750 miles is 57.5 cents, and the rate for 1,500 miles only 2 cents greater. Such a blanketing of the rates would make the scale unsuitable for general use without modification.

Defendants are opposed to establishing rates on horses and mules 115 per cent of the cattle rates, both because the widely varying cattle rates would form a confusing basis and because the percentage figure taken is claimed to be too small. In central territory the rates on horses and mules range from 140 to 150 per cent of the cattle rates. In *Livestock to, from, and between Points in Southeast*, 74 I. C. C. 419, we vacated the order in *Hudson Mule Co. v. L. & N. R. R. Co.*, 63 I. C. C. 6, prescribing distance rates on horses and mules for application in the Southeast, and authorized compromise scales agreed upon by the carriers and shippers, in which the horse and mule rates ranged from 113 to 117 per cent of the cattle rates. In *South Dakota R. R. Commissioners v. C. & N. W. Ry. Co.*, 77 I. C. C. 451, we prescribed a scale of reasonable maximum rates on horses and mules on the basis of 115 per cent of the cattle rates therein fixed. In the *Nebraska Livestock Case*, 89 I. C. C. 444, under a finding of undue prejudice and unjust discrimination against interstate commerce, we fixed scales of rates on cattle, and prescribed for horses and mules rates 15 per cent higher.

Complainants and defendants both propose distance scales for general application throughout the Southwest to supersede the numerous and conflicting distance scales, and to rectify the inconsistencies in the present adjustment. These scales are sufficiently set forth below in comparison with the present rates.

Distance	Between Okla- homa and Texas	Okla- homa- Kansas scale (M. K. & T.)	Shreve- port scale	Com- plainants' proposed scale	Defend- ants' proposed scale
	Cents	Cents	Cents	Cents	Cents
25 miles.....	17	12.5	16	14	17.5
50 miles.....	29.5	16	20.5	19	22
100 miles.....	41.5	24	27.5	24	31
150 miles.....	48.5	30	30.5	28	40
200 miles.....	57	34	33.5	32	47.5
250 miles.....	62	36	34.5	36	53.5
300 miles.....	64.5	37.5	39.5	40	58.5
400 miles.....	70.5	46	45	46	67.5
500 miles.....			48.5	50	74.5
600 miles.....			52	54	82
700 miles.....			56	57	
800 miles.....			59.5	60	
1,000 miles.....			59.5	66	
1,250 miles.....			59.5	72.5	
1,500 miles.....			59.5	77	

The defendants' proposal is based on the class B rates prescribed in *Memphis-Southwestern Investigation*, 55 I. C. C. 515, and is intended for application in Louisiana, Texas, Arkansas, Oklahoma, and eastern New Mexico. For distances over 600 miles, and from Kansas City and St. Louis to various points in Texas and Louisiana, defendants propose certain group-rate adjustments. If their scale should be extended for the greater distances, they would favor a rate of progression of 2 cents for each additional 25 miles up to 1,000 miles, lessened by the 1922 reductions. Complainants oppose for such distances any rate of progression in excess of 4 cents for each additional 100 miles. The rate for a haul of 1,000 miles on defendants' proposed rate scale extended would be 110.5 cents as compared with 108.5 cents from St. Louis to New York, N. Y., a distance of 1,052 miles. The present rates and the proposed group adjustment from Kansas City and St. Louis are contrasted in the following table:

To—	From Kansas City			From St. Louis		
	Distance	Present rate	Proposed rate	Distance	Present rate	Proposed rate
	<i>Miles</i>			<i>Miles</i>		
New Orleans, La.....	879	\$165.00	\$196.50	695	\$138.00	\$173.50
Texarkana, Ark.....	488	115.50	170.00	494	115.50	170.00
Lake Charles, La.....	744	138.50	196.50	699	138.50	196.50
Shreveport, La.....	560	115.50	185.00	567	115.50	185.00
Fort Worth, Tex.....	507	220.35	179.00	722	267.35	196.50
Beaumont, Tex.....	764	138.50	196.50	759	149.50	196.50
Houston, Tex.....	749	276.00	196.50	798	276.00	196.50
San Antonio, Tex.....	779	276.00	196.50	924	276.00	196.50
Oklahoma City, Okla.....	344	113.50	134.50	542	133.50	183.00
Amarillo, Tex.....	551	140.50	179.00	829	179.00	196.50

Defendants' proposed adjustment would reduce the present class A rates to Texas points, but would increase the rates from such points, between other States, and to and from the principal markets such as St. Louis, Kansas City, and Wichita. While the rates to Texas destinations would be reduced from 10 to 20 per cent, comparatively little of the traffic moves thereunder. Upon the great majority of the traffic to the Southwest increases ranging from 20 to 40 per cent would be effected.

Complainants' proposed scale is a modification of the southwestern cattle-rates scale established by the Director General of Railroads during Federal control, and now in effect in Arkansas, Oklahoma, Texas, and New Mexico and as far north as Wichita. The southwestern scale was based upon the scale prescribed in *Shreveport-Texas Cattle, Lignite, Wood, and Tanbark*, 48 I. C. C. 283, which slightly modified the so-called 1716 scale of cattle rates prescribed in *Investigation of Alleged Unreasonable Rates on Meats*, 22 I. C. C.

160. For distances under 250 miles, complainants' scale is lower than the Shreveport scale of rates on horses and mules.

The tabulation following compares for distances of 100 miles and over the horse and mule rates prescribed in the *Hudson Mule*, *South Dakota*, and *Nebraska cases* with the rates under the southeastern scale and with rates equal to 115 per cent of the southwestern cattle rates. The higher of the two Nebraska scales is shown.

Distances	Hudson Mule scale	South- eastern scale	South Dakota scale	North- ern Ne- braska scale	115 per cent south- western cattle scale
	<i>Cents</i>	<i>Cents</i>	<i>Cents</i>	<i>Cents</i>	<i>Cents</i>
25 miles.....	12.5	16	14	13	13
50 miles.....	17	20.5	17.5	16.5	18
75 miles.....	20.5	25	20.5	19.5	22
100 miles.....	22.5	28	23	22	24
125 miles.....	25	31	26.5	25.5	27.5
150 miles.....	27	33	29.5	27.5	29
200 miles.....	31.5	37	32	30.5	34
250 miles.....	34	41	34.5	33	38
300 miles.....	37	44	37	35	42
350 miles.....	38.5	46	38.5	37	45.5
400 miles.....	40.5	48	40.5	39	48
500 miles.....	44	53.5	44.5	48	53.5
600 miles.....	47.5	56.5	48	57.5	57.5
700 miles.....	51.5	61.5	52.5	-----	57.5
800 miles.....	55	65.5	56	-----	60
900 miles.....	58.5	68.5	59	-----	63
1,000 miles.....	62	72	63	-----	68.5
1,100 miles.....	-----	-----	65.5	-----	72.5
1,200 miles.....	-----	-----	70	-----	76
1,300 miles.....	-----	-----	-----	-----	81
1,400 miles.....	-----	-----	-----	-----	84.5
1,500 miles.....	-----	-----	-----	-----	88.5

Reference to the above table and to the Shreveport scale shown on a preceding page discloses that for distances up to 100 miles the rates under the Shreveport and southeastern scales are substantially in excess of those under the scales prescribed in the *Nebraska*, *Hudson Mule*, and *South Dakota cases*. The progression of the southwestern cattle scale is fairly regular up to 570 miles. For greater distances the progression in the Hudson Mule, South Dakota, and southeastern scales is more consistent than in some of the other scales, but the rates under the first two are not necessarily maximum reasonable rates for general application in the Southwest. Quite generally the rate levels in the Southwest are somewhat higher than in the Southeast.

Under the present adjustment Kansas City, St. Louis, Wichita, St. Joseph, and Oklahoma City each have the advantage over Fort Worth in certain sections. The different bases result in undue prejudice to the Fort Worth shippers and undue preference of competitors at such other markets. For instance, Kansas City and St. Louis have an advantage over Fort Worth in the distribution of horses and mules in Louisiana and Arkansas; Wichita, Kansas City, and

Oklahoma City have an advantage over Fort Worth in their inbound rates from points in New Mexico, Colorado, Kansas, and Oklahoma. Complainants have not proved any certain past pecuniary damage as a result of undue prejudice. The application of the same scale of rates throughout the Southwest would tend to harmonize the rates and to remove the undue prejudice against shippers at Fort Worth. But the record is insufficient to warrant us in determining interstate rates to Fort Worth from Texas differential territory and from New Mexico. The so-called 1716 scale rates on cattle were prescribed alike for interstate movements to Fort Worth from points in New Mexico, Texas, and Oklahoma. The Shreveport scales on cattle and on horses and mules are no higher in differential territory than in common-point territory; and the present southwestern cattle scale applies quite generally from points in the Southwest, including points in eastern New Mexico and Texas differential territory. The rates on horses and mules under the Arizona intrastate and interstate scales and under the New Mexico scale for distances under 500 miles are less than corresponding rates under the Shreveport scale.

THE WICHITA-KANSAS CITY CASES

In No. 11018, *Wichita Board of Commerce v. Director General*, *supra*, decided March 1, 1921, the complaint attacked the carload rates on horses and mules from Wichita to points in Arkansas, Louisiana, and Texas, and to Memphis and points basing thereon, as unreasonable, and as unduly prejudicial to the extent that they exceeded for the same or comparable distances the rates from Kansas City and other points taking the Kansas City rates to the same destinations. From Wichita to Arkansas, except to stations on the St. Louis-San Francisco and the Midland Valley; to western Louisiana; and to Texas common-point territory, including the Fort Worth-Dallas group, class A rates applied. The evidence did not cover rates to Texas differential territory. To certain destinations east of the Mississippi River the class A rate to Kansas City formed part of the applicable combination rates. In other instances commodity rates were applicable but were higher than from Kansas City. We there found that the rates assailed were not unreasonable, except in the instances of unprotected departures from the aggregate-of-intermediates clause of the fourth section of the interstate commerce act, but that the rates to points in Arkansas, Louisiana, and Texas common-point territory, including the Fort Worth-Dallas group, were unduly prejudicial to the extent that they exceeded the rates contemporaneously in effect on like traffic from Kansas City to the same destinations. We also found the rate from Wichita

to Memphis unduly prejudicial to the extent that it exceeded the contemporaneous rate from Kansas City by more than \$10 per standard car, and required the establishment of rates for the future in accordance with these findings. We subsequently amended the order so as to require the establishment of rates to Arkansas points on the St. Louis-San Francisco between Wichita and Memphis not more than \$13.50 per standard car in excess of the contemporaneous rates on like traffic from Kansas City.

Subsequent to the decision the carriers undertook to establish revised rates from Kansas City, Wichita, and contiguous and intermediate points in Kansas and Missouri to Memphis, other lower Mississippi River points, and certain points in Arkansas and Louisiana. They proposed to reduce the rates from Wichita and increase those from Kansas City to an intermediate level. Upon protest of the Chamber of Commerce of Kansas City we suspended the rates in Investigation and Suspension Docket No. 1483. In the report that followed, *Horses and Mules from Kansas City, Mo., supra*, we found that the proposed rates did not exceed the limit of reasonableness, but that without corresponding changes in the rates from St. Louis they would result in undue prejudice to Wichita and Kansas City shippers and in undue preference of St. Louis shippers, and were therefore not justified. Upon petition of respondents in this proceeding we reopened it for such further proceedings as we might thereafter determine upon. The parties have not desired a rehearing. The present rates from Wichita to the destinations named in the suspended schedules appear to be generally on the Kansas City basis, except in the instances where affected by intermediate application of the Memphis rate. The following table, based on that appearing on page 99 of the report in the last-cited case, compares the present rates from Kansas City, Wichita, and St. Louis to some typical destinations named in the schedules mentioned.

To—	From Kansas City		From Wichita		From St. Louis	
	Distance	Present rate	Distance	Present rate	Distance	Present rate
	<i>Miles</i>		<i>Miles</i>		<i>Miles</i>	
Peach, Ark.....	344	\$98. 50	410	\$103. 50	316	\$98. 50
Bridge Junction, Ark.....	482	98. 50	549	110. 50	303	85. 00
Memphis, Tenn.....	484	98. 50	552	110. 50	306	110. 40
Logtown, La.....	712	131. 50	687	131. 50	712	128. 00
Georgetown, La.....	760	133. 50	735	133. 50	760	131. 50
Jena, La.....	698	147. 50	674	147. 50	777	145. 50
New Orleans, La.....	879	152. 00	947	152. 00	695	143. 75

¹ Via Illinois Central as delivering carrier, \$91.50.

Upon our own motion we reopened No. 11018 for further consideration.

The complaint in No. 13001 attacked as unreasonable and unduly prejudicial the class A rates on horses, mules, asses, and burros from Kansas City to points in Louisiana and Texas. Such rates applied chiefly to points in southern Louisiana west of the Mississippi River and to points in Texas common-point territory, including the Fort Worth-Dallas group. There was no specific evidence with respect to asses or burros. In the report, *Kansas City Chamber of Commerce v. A. & W. Ry. Co., supra*, we found such rates unreasonable and unduly prejudicial to the extent that they exceeded a prescribed scale of distance rates based on the class C scale provided in the *Memphis-Southwestern Investigation, supra*. Upon petition of complainant we have reopened this case for further consideration.

Complainant in this proceeding contends that the adoption of the Memphis-Southwestern class C rates will impose upon Kansas City dealers conditions even worse than now obtain and increase the advantage of St. Louis in the important markets of Louisiana and Texas, and that such basis of rates is unreasonably high and its prescription not warranted by the record or by precedent.

Complainant states that although the scale prescribed would carry reductions to certain Texas points, such as Dallas and Sherman, the use of the same basis by the carriers to all Texas and Louisiana points will result in reductions on unimportant traffic and substantial increases to points to which there is a considerable movement. For example, Kansas City has rates per car of \$138.50 to Beaumont and \$165 to New Orleans. Under the scale prescribed those rates would become \$196.65 and \$211.60 per standard car, respectively. If the rates condemned as unduly prejudicial in *Horses and Mules from Kansas City, Mo., supra*, had taken effect, the Kansas City rate to New Orleans would have become about \$53 in excess of that from St. Louis. If the scale approved in *Kansas City Chamber of Commerce v. A. & W. Ry. Co., supra*, should become the basis for the rate from Kansas City, St. Louis would have an advantage at New Orleans of \$73.40. At present both Kansas City and St. Louis have a rate of \$115.50 to Shreveport. On the basis prescribed the rate from Kansas City would become \$161 per car. Such results would obviously be inconsistent with our finding in *Horses and Mules from Kansas City, Mo., supra*.

Complainant asks for southbound rates on horses and mules to Texas equal to 115 per cent of the northbound cattle rates or 115 per cent of the southwestern cattle scale, and to Louisiana rates in line with the present commodity rates to New Orleans, Alexandria, Shreveport, Monroe, etc., or to both States rates on the basis of the Shreveport scale. The basis for the suggestion of 115 per cent has already been discussed in connection with the Fort Worth rates.

In a number of recent cases we have found the southwestern scale to provide a reasonable basis of rates on cattle and hogs from Kansas City and South St. Joseph, Mo., to Fort Worth and Oklahoma City, *Wilson & Co. v. Director General*, 81 I. C. C. 79, and cases there cited. In a companion case to the instant proceeding, *Kansas City Live Stock Exchange v. A. & S. Ry. Co.*, 81 I. C. C. 482, we found the rates on cattle, calves, hogs, and sheep from Kansas City to Texas points unreasonable for the future to the extent that they might exceed the rates under the southwestern scale. This scale and other scales prescribed or approved by us have been referred to and compared earlier in this report. None of those scales appear to furnish a standard of rates that we would be justified in prescribing in the entirety for general application to shipments of horses and mules from the Southwest. Certain of them obviously have been constructed to meet particular situations, and are unsuited for use as a uniform basis over the entire territory involved. In the *Memphis-Southwestern Investigation*, 55 I. C. C. 515, and 77 I. C. C. 473, we considered numerous rates scales and rate bases, and promulgated scales of class and commodity rates that seemed particularly applicable to the traffic and territory there considered. One of those scales, commodity scale 12, 77 I. C. C. 595, with slight modifications, appears to afford a consistent and reasonable basis for the statement of reasonable rates applicable to the interstate shipment of horses and mules in the Southwest, which will go far toward removing the unlawful prejudices and preferences in various situations which result from the applicable rate adjustment. This scale for single-line hauls, stated in cents per 100 pounds, for distances of 100 to 800 miles appears in the appendix to this report. To illustrate in part the effect of the adoption for general use in the Southwest of the rate scales above referred to, the following table of computed minimum charges per car between Kansas City and representative points in Texas and Louisiana will be of service:

Between Kansas City, Mo., and—	Distance	Present south-bound rates	Present north-bound rates	115 per cent of north-bound cattle rates	115 per cent of south-western cattle scale	Shreveport scale, 48 I. C. C. 312
	<i>Miles</i>					
Sherman, Tex.....	422	\$251.85	\$172.50	\$128.80	\$113.85	\$106.95
Dallas, Tex.....	517	251.85	172.50	128.80	125.35	116.15
Corsicana, Tex.....	539	276.00	180.55	132.25	125.35	117.30
Amarillo, Tex.....	551	140.50	140.50	124.20	128.80	119.60
Sweetwater, Tex.....	656	170.00	187.45	134.55	132.25	128.80
Beaumont, Tex.....	769	138.50	138.50	134.55	134.55	136.85
Houston, Tex.....	749	276.00	180.55	158.70	132.25	132.25
Shreveport, La.....	560	115.50	115.50	128.80	128.80	119.60
Monroe, La.....	657	130.50	130.50	128.80	132.25	128.80
Alexandria, La.....	683	133.50	133.50	132.25	132.25	128.80
Lake Charles, La.....	744	138.50	138.50	134.55	132.23	132.25
New Orleans, La.....	863	152.00	152.00	-----	142.60	136.85

Between Kansas City, Mo., and—	Distance	Hudson Mule scale, 63 I. C. C. 6	South- eastern scale, 74 I. C. C. 419	South Dakota scale, 77 I. C. C. 451	Mem- phis- South- western scale 12, 77 I. C. C. 595	Pre- scribed in No. 13001, 89 I. C. C. 22
	<i>Miles</i>					
Sherman, Tex.....	422	\$95.45	\$112.70	\$95.45	\$119.60	\$140.30
Dallas, Tex.....	517	103.50	124.20	103.50	132.25	154.10
Corsicana, Tex.....	539	105.80	126.50	105.80	135.70	166.75
Amarillo, Tex.....	551	108.10	126.50	108.10	138.00	161.00
Sweetwater, Tex.....	656	116.15	135.70	117.30	149.50	181.70
Beaumont, Tex.....	769	126.50	147.20	125.35	158.70	196.65
Houston, Tex.....	749	126.50	154.10	132.25	156.40	211.60
Shreveport, La.....	560	108.10	126.50	108.10	138.00	161.00
Monroe, La.....	657	116.15	135.70	117.30	149.50	181.70
Alexandria, La.....	683	118.45	138.00	120.75	151.80	181.70
Lake Charles, La.....	744	126.50	143.75	124.20	156.40	196.65
New Orleans, La.....	868	134.55	154.10	134.55	170.20	211.60

¹ Charge based on scale extended at same rate of progression.

CONCLUSIONS

In Nos. 12358, 13619, and 13627 we find that the rates for the interstate transportation of horses and mules, in carloads, between Fort Worth, Tex., and points in Kansas and Missouri were and are unreasonable to the extent that they exceeded and exceed the aggregate of intermediate rates subject to the interstate commerce act contemporaneously in effect, and that the rates assailed were not otherwise unreasonable in the past. We further find that the rates for the interstate transportation of horses and mules, in carloads, between Fort Worth, Tex., and stations on the lines of defendants in the territory described in the appendix to this report will be unjust and unreasonable for the future to the extent that they may exceed the rates for similar distances set forth in the appendix, and that the interstate rates on such traffic to or from Fort Worth from or to stations on the lines of defendants in New Mexico, Texas differential territory, and in the territory described in the appendix will be for the future unduly prejudicial to Fort Worth and unduly preferential of Wichita, Kans., Kansas City, St. Joseph, and St. Louis, Mo., and Oklahoma City, Okla., to the extent that they may be higher, distance considered, than the corresponding interstate rates contemporaneously maintained by defendants on like traffic from or to the same stations to or from Wichita, Kansas City, St. Joseph, St. Louis, or Oklahoma City. We further find that complainants in Nos. 12358 and 13627 who are named in the margin hereof¹ made ship-

¹ Ross Brothers Horse & Mule Company, a corporation; W. O. Rominger and C. O. Rominger, a partnership trading as W. O. Rominger & Company; S. Q. Burnett, J. M. Yount, and S. E. Ross, a partnership trading as Burnett-Yount Horse & Mule Company; Fred Mulch and Wm. Blecha, a partnership trading as Mulch & Blecha; J. C. Stinson and J. A. Caulk, a partnership trading as Stinson & Caulk; V. L. Lemoine and J. C. Ellington, a partnership trading as Lemoine & Ellington; J. C. Shelton and P. J. Jamison, a partnership trading as Shelton & Jamison; H. P. Walker and S. E. Ross, a partnership

ments on rates herein found to have been unreasonable in the past and paid and bore the charges thereon; that they have been damaged thereby in the amount of the difference between the charges paid and those which would have accrued upon the bases of the lower aggregate-of-intermediates rates subject to the interstate commerce act contemporaneously in effect; and that they are entitled to reparation with interest. These complainants should submit statements in compliance with Rule V of the Rules of Practice.

Other complainants in Nos. 12358, 13619, and 13627, who may have made shipments under the rates herein found to have been unreasonable in the past, may apply within 60 days for further hearing as to reparation thereon.

There were also assigned for hearing, in connection with No. 13627, those portions of fourth-section applications Nos. 461, 462, 621, 673, and 678 by which the carriers ask for authority to continue to charge for the transportation of livestock, in carloads, between points in Texas and points in Louisiana, Arkansas, Oklahoma, Kansas, Missouri, Nebraska, Colorado, and Kentucky, rates which are in contravention of the provisions of the fourth section of the interstate commerce act. The carriers presented no evidence in justification, and stated that they did not desire further relief. Except as hereinafter specifically authorized, fourth-section relief now afforded under such applications to the extent here involved will be denied.

Upon further consideration of No. 11018 we find that the rates assailed on horses and mules were not unreasonable in the past except as originally found with respect to rates in violation of the fourth section of the act, but that the interstate rates on horses and mules, in carloads, from Wichita, Kans., to destinations in Arkansas, Louisiana, and Texas within the territory described in the appendix hereto will be for the future (1) unreasonable to the extent that they may exceed the rates for similar distances set forth in such appendix, and (2) unduly prejudicial to Wichita and its dealers and unduly preferential of Kansas City, Mo., and its dealers, to the extent that they may be higher, distance considered, than the corre-

trading as Walker & Company; F. A. Harp and J. S. Martin, a partnership trading as Harp & Martin; J. T. Quin and Q. H. Ralston, a partnership trading as Quin & Ralston; C. C. Smith and Sam Scott, a partnership trading as Smith & Scott; C. C. Smith and C. L. Smith, a partnership trading as Smith & Smith; Pete Yount and P. Chastain, a partnership trading as Yount & Chastain; Ed. Hall and Walter Free, a partnership trading as Hall & Free; Pete Yount and C. S. Thomas, a partnership trading as Yount & Thomas; J. M. Yount and C. C. Smith, a partnership trading as Yount & Smith; J. M. Yount and Horace Elkins, a partnership trading as Yount & Elkins; Luckett & Hunter, a corporation; G. I. King and N. G. Whittington, trading as the Fort Worth Horse & Mule Company; S. E. Ross; Pete Yount; H. P. Walker; Wm. Blecha; S. A. Overton; S. R. Ponder; J. A. Caulk; J. C. Stinson; J. C. Ellington; J. C. Shelton; D. S. Murray; D. I. Porter; C. E. Goldsmith; J. T. Quin; C. C. Smith; W. R. Ross; J. M. Yount; L. Luckett; J. B. Jackson; and J. M. Grogan,

sponding rates contemporaneously maintained by defendants on like traffic from Kansas City to the same destinations.

Upon further consideration of Investigation and Suspension Docket No. 1483, we find that the rates proposed in the schedules therein suspended have not been justified, and that reasonable interstate rates for the future on horses and mules, in carloads, from Wichita, Kans., and Kansas City, Mo., to points of destination in Arkansas and in Louisiana west of the Mississippi River named in such schedules will be those not in excess of rates computed on the basis of the rate scale set forth in said appendix. We further find that the rates on horses and mules, in carloads, from Wichita and Kansas City to the destinations mentioned will be for the future unduly prejudicial to Wichita and Kansas City and unduly preferential of St. Louis to the extent that they may be higher, distance considered, than the corresponding rates contemporaneously maintained by respondents on like traffic from St. Louis to the same destinations.

Upon further consideration of No. 13001 we find that the class A rates on horses and mules, in carloads, from Kansas City, Mo., to destinations in Louisiana and Texas within the territory described in the appendix hereto will be for the future unjust and unreasonable to the extent that they may exceed the rates for similar distances set forth in said appendix, and that such rates from Kansas City to destinations in Texas and western Louisiana will be for the future unduly prejudicial to Kansas City and its dealers and unduly preferential of St. Louis, Mo., and its dealers to the extent that they may be higher, distance considered, than the corresponding rates contemporaneously maintained on like traffic from St. Louis to the same destinations.

Asses and burros customarily move in the Southwest on the same rates as do horses and mules, and we will expect defendants and respondents herein to maintain the same rates on them as are herein prescribed.

In computing distances under the scales prescribed, the shortest possible routes by existing connections for interchange of carload traffic should be used, but such routes need not embrace more than the lines or parts of lines of three carriers. Lines under common ownership or control should be considered as a single line in applying the rates prescribed. Defendants will be authorized to establish and maintain by all routes between Fort Worth, Wichita, Kansas City, St. Joseph, St. Louis, and Oklahoma City, on the one hand, and points in the territory described in the appendix hereto, on the other hand, the lowest rates prescribed herein as maximum rates over

any route between said points, and to maintain higher rates from, to, or between intermediate points, provided that the rates from, to, or between the said intermediate points shall not exceed the rates prescribed herein as maximum rates and shall in no case exceed the lowest combination. Defendants will be expected to refrain from meeting by routes that are excessively circuitous or as to which the rates prescribed are less than reasonably compensatory the rates in effect over the direct lines, and if this requirement be disregarded such further orders will be entered in the premises as may be found necessary.

Defendants should not content themselves with the filing of tariffs containing the distance scales, but should publish specific rates computed on the bases herein prescribed. There are practical difficulties in the publication of specific rates, particularly joint rates, based on a strict distance scale. We will, therefore, for the present require publication of specific rates only as follows: (1) To and from Fort Worth, respectively, from and to stations on the lines of defendants in Nos. 12358 and 13627, in the territory described in the appendix from or to which there has been within the past two years a carload movement of horses or mules to or from Fort Worth, Wichita, Kansas City, St. Louis, St. Joseph, or Oklahoma City; and (2) from Wichita and Kansas City to destinations on the lines of defendants and respondents in Nos. 11018 and 13001 and Investigation and Suspension Docket No. 1483 in Arkansas, Louisiana, and Texas within the territory described in the appendix to which there has been within the past two years a carload movement of horses or mules from Wichita, Kansas City, or St. Louis. Other specific rates should be published as movement develops.

We will enter appropriate orders.

APPENDIX

The rates in the following scales will be for the future maximum reasonable rates for application to interstate carload shipments of horses and mules as prescribed in the attached report between points in the following described territory, viz, the States of Kansas, Oklahoma, and Arkansas; Texas common-point territory, including the Fort Worth-Dallas group and including points on and east of the line of the Fort Worth & Denver City north of Amarillo, Tex.; that part of Louisiana west of the Mississippi River; that part of Missouri south of the Missouri River; that part of Colorado on and south of the lines of the Chicago, Rock Island & Pacific and the Union Pacific through Limon to Denver and on and east of the main line of the Colorado & Southern south of Denver through Pueblo and Trinidad to the Colorado-New Mexico State line; and that part of New Mexico on and east of the line of the Colorado & Southern. Rates are in cents per 100 pounds.

Distance	Single-line rate	Joint-line rate	Distance	Single-line rate	Joint-line rate
	<i>Cents</i>	<i>Cents</i>		<i>Cents</i>	<i>Cents</i>
100 miles.....	24	27	380 miles and over 360.....	49	50
105 miles and over 100.....	24	27	400 miles and over 380.....	50	51
110 miles and over 105.....	25	28	425 miles and over 400.....	52	53
115 miles and over 110.....	26	29	450 miles and over 425.....	53.5	54.5
120 miles and over 115.....	26	29	475 miles and over 450.....	55	56
125 miles and over 120.....	27	30	500 miles and over 475.....	56	57
130 miles and over 125.....	28	31	525 miles and over 500.....	57.5	57.5
135 miles and over 130.....	28	31	550 miles and over 525.....	59	59
140 miles and over 135.....	29	32	575 miles and over 550.....	60	60
145 miles and over 140.....	30	33	600 miles and over 575.....	61.5	61.5
150 miles and over 145.....	30	33	625 miles and over 600.....	63	63
160 miles and over 150.....	31	34	650 miles and over 625.....	64	64
170 miles and over 160.....	32	35	675 miles and over 650.....	65	65
180 miles and over 170.....	33	36	700 miles and over 675.....	66	66
190 miles and over 180.....	34	37	725 miles and over 700.....	67	67
200 miles and over 190.....	35	38	750 miles and over 725.....	68	68
210 miles and over 200.....	36	38	775 miles and over 750.....	69	69
220 miles and over 210.....	37	39	800 miles and over 775.....	70	70
230 miles and over 220.....	38	40	825 miles and over 800.....	71	71
240 miles and over 230.....	39	41	850 miles and over 825.....	72	72
250 miles and over 240.....	39	41	875 miles and over 850.....	73	73
260 miles and over 250.....	40	42	900 miles and over 875.....	74	74
280 miles and over 260.....	42	44	925 miles and over 900.....	75	75
300 miles and over 280.....	44	46	950 miles and over 925.....	76	76
320 miles and over 300.....	46	48	975 miles and over 950.....	77	77
340 miles and over 320.....	47	49	1,000 miles and over 975.....	78	78
360 miles and over 340.....	48	49			

Rates for distances in excess of 1,000 miles should be made on the basis of the scale extended at the same rate of progression.

Rates prescribed in this report shall be subject to the same carload minimum weights as are published on horses and mules in item No. 1685-A, supplement No. 14 of Agent A. C. Fonda's Texas lines tariff I. C. C. No. 148.

93 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET NO. 2219

IRON AND STEEL BETWEEN NEW JERSEY AND NEW ENGLAND POINTS

Submitted September 3, 1924. Decided November 26, 1924

Proposed increased rates on iron and steel articles, in carloads and less than carloads, between Newark, N. J., and points grouped therewith, and New England points found not justified. Suspended schedules ordered canceled.

W. A. Cole for respondents.

A. Van Allen Thomason for Walworth Manufacturing Company and interveners generally.

Charles E. Vose for Perry, Buxton & Doane Company.

Arthur N. Payne for Associated Industries of Massachusetts.

REPORT OF THE COMMISSION

DIVISION 3, COMMISSIONERS HALL, AITCHISON, AND ESCH

By DIVISION 3:

By schedules filed to become effective August 20, 1924, respondents proposed certain increases in their rates on iron and steel articles, in carloads and less than carloads, between Newark, N. J., and points grouped therewith, and points in New England. Upon protest by various interested parties the operation of the schedules was suspended until December 18, 1924. Rates will be stated in cents per 100 pounds except as otherwise noted.

The following table taken from respondents' exhibits gives a history of the rates on iron and steel articles from the Newark and Philadelphia groups to Boston, and points taking the same rates, commencing with the 5 per cent rate increase effective February 23, 1915:

To Boston, Mass	From Newark group			From Philadelphia group		
	Bar iron, c. l.	Bar iron, l. c. l	Scrap iron, c. l. ¹	Bar iron, c. l.	Bar iron, l. c. l.	Scrap iron, c. l. ¹
Five per cent increase:	<i>Cents</i>	<i>Cents</i>	<i>Cents</i>	<i>Cents</i>	<i>Cents</i>	<i>Cents</i>
February 23, 1915.....	14. 2	16. 8	242	14. 2	16. 8	242
January 30, 1917.....	² 13. 2	² 14. 8	² 222	14. 2	16. 8	242
Fifteen per cent increase, May 25, 1918.....	15	17	260	16. 5	19. 5	280
Twenty-five per cent increase, June 25, 1918.....	19	21. 5	330	20. 5	24. 5	350
Forty per cent increase, August 26, 1920.....	26. 5	30	462	28. 5	34. 5	490
Ten per cent reduction, July 1, 1922.....	24	27	416	25. 5	31	441
Present rates.....	24	27	416	25. 5	31	441
Proposed rates.....	24. 5	29	421	25. 5	31	441

¹ Rates in cents per ton of 2,240 pounds.

² Rate established in compliance with order in *Pardec Works v. C. R. R. of N. J.*, 39 I. C. C. 162

From the foregoing it will be seen that the rates under suspension would result in increasing the rates between Newark rate points and Boston rate points as follows: Bar iron, in carloads, 0.5 cent; bar iron, in less than carloads, 2 cents; and scrap iron, in carloads, 5 cents.

Respondents contend that the adjustment proposed merely restores the relationships which existed in the rates on iron and steel articles between the Newark and Philadelphia groups and points in New England prior to the various general percentage changes; and that the specific differences between the proposed rates from the Newark group and the concurrent Philadelphia rates are exactly the differences in cents between the rates established from the Newark group following our decision in *Pardee Works v. C. R. R. of N. J.*, 39 I. C. C. 162, and those then in effect from the Philadelphia group.

Protestants insist that the Newark group rates have maintained their percentage relationship to the Philadelphia basis since the *Pardee case*, *supra*, and that if the suspended rates become effective that relationship will be disturbed with the result that on less-than-carload traffic, for example, the difference will be reduced from approximately 12.5 per cent to about 6 per cent. It is also urged that because of keen competitive conditions the proposed rates will have a detrimental effect upon protestants' business, a considerable portion of which moves in less-than-carload lots, and that no changes should be made at the present time in view of the pending *Eastern Class Rate Investigation*, Docket No. 15879, as in all probability commodity rates will be affected by any order entered therein.

Respondents rely entirely upon the fact that the proposed rates will restore the spread between the Newark and Philadelphia groups established following our decision in the *Pardee case*. For over seven years that spread has been treated as one varying with the rates and not as a fixed differential. There is no evidence that the rates from the Newark group are subnormal as compared with the rates from other groups, and the former relationship, if desired by respondents, could be readily restored by reducing the rates from the Philadelphia group instead of increasing the rates from the Newark group. We are of the opinion that respondents have failed to sustain the burden of proof.

Accordingly we find that the proposed schedules have not been justified. An order will be entered requiring their cancellation and discontinuing this proceeding.

INVESTIGATION AND SUSPENSION DOCKET No. 2209

LUMBER AND SHINGLES FROM NORTH PACIFIC COAST
TO SOUTHERN POINTS

Submitted October 15, 1924. Decided November 29, 1924

Proposed joint rates on cedar lumber and cedar shingles from north Pacific coast points to southern points found not justified. Suspended schedules ordered canceled without prejudice, and proceeding discontinued.

W. A. Robbins for transcontinental lines.

O. P. Kellogg for Chicago, Milwaukee & St. Paul Railway Company, respondent.

Joseph N. Teal, William C. McCulloch, and H. N. Proebstel for West Coast Lumbermen's Association, protestants.

REPORT OF THE COMMISSION

DIVISION 3, COMMISSIONERS HALL, CAMPBELL, AND COX

BY DIVISION 3:

By schedules filed to become effective August 5 and September 10, 1924, respondents proposed to establish joint rates on cedar lumber and cedar shingles from north Pacific coast points to southern points as provided in Agent Countiss's tariff I. C. C. No. 1136 and supplement 2 thereto. The proposed rates would result in both increases and reductions in the present rates, the former predominating, but do not reflect the lowest available combinations now in effect. Upon protest of the West Coast Lumbermen's Association the operation of the schedules was suspended until December 3, 1924.

At the hearing the witness for the transcontinental carriers stated that the rates under suspension are a result of the offer made by the southeastern carriers at the time Docket No. 13483, *West Coast Lumbermen's Asso. v. A. & R. R. R. Co.*, was heard; and that the adjustment is entirely in the hands of the southeastern carriers. The latter were not represented at the hearing. No evidence was offered in support of the suspended schedules.

When Docket No. 13483 was heard the southeastern carriers offered to publish a certain basis of joint rates which would not exceed the lowest combination.

We find that the proposed rates have not been justified. An order will be entered requiring cancellation of the suspended schedules and discontinuing this proceeding, without prejudice to the filing of new schedules in conformity with the offer made by the southeastern carriers at the hearing in Docket No. 13483.

No. 14591

BOARD OF COUNTY COMMISSIONERS, CRAWFORD
COUNTY, KANS., *v.* ST. LOUIS-SAN FRANCISCO RAIL-
WAY COMPANY ET AL.

Submitted June 26, 1924. Decided November 25, 1924

Rates on broken stone or chatts from Joplin, Webb City, and Oronogo, Mo., to destinations in Crawford County, Kans., over the Missouri Pacific, found unreasonable. Reasonable rates prescribed for the future. Reparation denied.

Thomas B. Martin for complainant.

Chas. A. Reddin for St. Louis-San Francisco Railway Company, *F. B. Clark, H. H. Larimore,* and *James M. Chaney* for Missouri Pacific Railroad Company, and *Bruce Cameron* for Joplin & Pittsburg Railway Company.

REPORT OF THE COMMISSION

DIVISION 3, COMMISSIONERS HALL, CAMPBELL, AND COX

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant in pursuance of its official duties is constructing improved roads in Crawford County, Kans. By complaint filed January 2, 1923, it alleges that the rates charged on crushed and broken stone, known as chatts, from points in the Joplin-Galena mining district in Jasper County, Mo., and Cherokee County, Kans., to destinations in Crawford County, Kans., were and are unreasonable. Reasonable rates for the future and reparation are sought. Unless otherwise stated rates are in cents per 100 pounds.

At the hearing complaint as against the St. Louis-San Francisco and the Joplin & Pittsburg was withdrawn in consideration of the publication by these carriers of rates on chatts from and to the points

described on the basis of the existing Kansas intrastate rates. The Missouri Pacific declined to reduce the rates from points on its line and the case proceeded against that carrier as sole defendant.

The shipments consisted of crushed waste material from zinc mines. The points of origin on defendant's line are Joplin, Webb City, and Oronogo, Mo. Complainant describes the destinations as points in Crawford County. Defendant shows 14 points in Crawford County on its line to which the distances from Joplin range from 48 to 69 miles. The distances from Oronogo and Webb City, respectively, are 2 and 6 miles less.

Since July 1, 1922, the rates from the points of origin to Crawford County destinations more than 60 miles distant from Joplin have been 6.5 cents and where 60 miles or less, 5 cents, except to Fleming, Kans., 53 miles, which takes the 6.5-cent rate. The reason for the higher rate to Fleming is not explained. Prior to July 1, 1922, these rates were 7 cents and 5.5 cents, respectively.

Complainant compares the present rates with the scale of rates on crushed stone, or mine refuse, proposed by the carriers in an action before the Missouri Public Service Commission for application between points in Missouri, with the rates subsequently ordered by that commission, and with the intrastate rates on this commodity in other neighboring States. These rates for comparable distances are, in cents per net ton, as follows:

Distance	Proposed by carriers for Missouri	Required by Missouri P. S. C.	Kansas	Arkan- sas	Okla- homa	Texas	Ne- braska	EQUIVA- LENT OF PRESENT RATES ASSAILED
	Cents	Cents	Cents	Cents	Cents	Cents	Cents	Cents
45 miles.....	70	75	80	80	70	80	70	100
50 miles.....	70	75	80	80	70	80	70	100
55 miles.....	80	80	80	100	80	80	80	100
60 miles.....	80	80	80	100	80	80	80	100
65 miles.....	90	85	90	100	80	100	90	130
70 miles.....	90	85	90	100	80	100	90	130

It will be noted that the rates of which complaint is made exceed the State scales, and the scale proposed by the carriers in the Missouri case, by from 20 to 50 cents per ton, or 1 to 2.5 cents per 100 pounds. Complainant also compares the rates assailed with rates of 80 cents per net ton on this commodity from certain stations on the Missouri-Illinois and the Mississippi River & Bonne Terre to St. Louis for hauls of 67 to 69 miles; 70 cents per net ton on silica sand from and to points in Missouri, 33 to 44 miles; and 90 cents per net ton on zinc ore and concentrates from points in Kansas to points in Kansas and Missouri, 27 to 99 miles. Zinc ore is worth about \$47.50 per ton, and chatts from 15 to 35 cents per ton, both f. o. b. origin.

Defendant asserts that the scale proposed for application in Missouri was offered only because the State commissions were prescribing very low rates on this material and under the rates therein for the longer distances the carriers would have opportunity to recoup the losses suffered on the short hauls. It is explained that the 80-cent rate to St. Louis was established in the hope of securing a return load for cars used in handling the large volume of coal traffic from the Illinois field through the St. Louis gateway, and that the 90-cent rate on zinc ore and concentrates is in effect a proportional rate from the mines to the ovens published for the purpose of obtaining the haul on the outbound product. Defendant shows that the rates assailed are lower than the interstate distance scale rate of 8 cents applicable on chattis to all the destinations named, except Pittsburg, Kans., to which it is 7 cents. Defendant also points out that the 5-cent rate here considered is the same as that for the same distances under the Kansas intrastate scale in effect prior to June 25, 1918, which is now lower in many instances than it was then. Defendant therefore urges that the rates assailed can not be deemed to be unreasonably high. But it does not appear that the former Kansas scale was no higher than was reasonable.

Chatts is a cheap commodity and necessarily can move only on low rates. For the average distances from Joplin of 65 miles to the destinations, except Fleming, taking the 6.5-cent rate, and 55 miles to the destinations taking the 5-cent rate, the ton-mile earnings are 20 and 18.2 mills, respectively. Under the Kansas scale these hauls would yield ton-mile earnings of 13.8 mills and 14.5 mills.

In the *Memphis-Southwestern Investigation*, 77 I. C. C. 473, we prescribed for single-line hauls of over 40 but not exceeding 60 miles and of over 60 but not exceeding 80 miles, all stated in 5-mile blocks, rates of 4 and 5 cents, respectively. These rates were to apply to and from points in Missouri on and south of the line of the St. Louis-San Francisco running from Cape Girardeau through Mingo to Springfield. They did not apply to and from points in Kansas. The points of origin here considered are west of Springfield. In *Prairie Pipe Line Co. v. Director General*, 88 I. C. C. 167, in which the rates on iron pipe from points of origin in southeastern Kansas to destinations in Oklahoma were assailed, we said:

The record in this case discloses no differences in transportation conditions which would warrant any different level or basis of rates for the future on iron pipe than that prescribed in *Memphis-Southwestern Investigation*, *supra*.

The destinations here considered are in southeastern Kansas.

We find that the rates assailed from Joplin, Webb City, and Oronogo to destinations in Crawford County on the Missouri Pacific from 48 to 69 miles distant from Joplin over the lines of that de-

feudant were and are unreasonable to the extent that they exceeded and exceed rates of 4 cents per 100 pounds to those destinations not over 60 miles distant from Joplin over defendant's line and 5 cents per 100 pounds to those destinations over 60 miles but not over 70 miles distant from Joplin over defendant's line.

REPARATION

Approximately 80,800 tons of the shipments moved over the Missouri Pacific. The freight charges thereon were paid by the contractor. No part thereof was paid by Crawford County, but the contract between the county and the contractor provided that the county should have the benefit of any decrease in freight rates. A very similar situation was under consideration in *Sloss-Sheffield Steel & Iron Co. v. L. & N. R. R. Co.*, 40 I. C. C. 738, 741, wherein we said:

Whatever may be the rights or equities of the consignors and the consignees arising out of their contract as to variations in their agreed price for the commodity, dependent upon changes in the transportation rates, they present no question that is cognizable by this commission, dealing, as it does, with the legal public obligations of the carrier, which is a stranger to the private contract between consignor and consignee.

To the same effect, see *International Coal Products Corp. v. Director General*, 81 I. C. C. 435, 439. Complainant is not entitled to reparation on these shipments.

An appropriate order for the future will be entered.

93 I. C. C.

No. 14234

PARLOR FRAME MANUFACTURERS' ASSOCIATION *v.*
ANN ARBOR RAILROAD COMPANY ET AL.

Submitted November 26, 1923. Decided November 25, 1924

1. Less-than-carload ratings on set-up wooden chair and lounge frames, when in boxes, crates, bundles, or loose, in western and southern classifications, and when loose or in bundles in official classification, found not unreasonable or otherwise unlawful. Carload rating on such frames, loose or in packages, in official classification found not unreasonable or otherwise unlawful.
2. Less-than-carload rating on set-up wooden chair and lounge frames, in boxes or crates, in official classification found unreasonable, and reasonable rating of two and one-half times first class prescribed.

J. C. Colquitt and C. S. Bather for complainants.

J. C. Bills, W. E. Prendergast, Robert W. Fyfe, William R. Seaton, A. H. Greenly, and John N. Steadwell for defendants.

REPORT OF THE COMMISSION

DIVISION 3, COMMISSIONERS HALL, POTTER, AND COX

BY DIVISION 3:

Exceptions were filed by defendants to the report proposed by the examiner and the case was orally argued. Our conclusions differ from those recommended by him.

Complainant is a voluntary association of manufacturers of furniture frames at Chicago, Ill., Sheboygan, Wis., and Minneapolis, Minn. By complaint filed September 11, 1922, it alleges that the ratings on furniture frames, in carloads, in official classification, and in less than carloads, in official, southern, and western classifications, are unreasonable, unjustly discriminatory, and unduly prejudicial. We are asked to prescribe just and reasonable ratings for the future.

Complainant's members produce approximately 80 per cent of the furniture frames that move in interstate commerce. Of the total production 60 per cent is manufactured at Chicago. There are also important shippers at Sheboygan, Wis., Minneapolis, Minn., and Allentown and Fullerton, Pa., and smaller shippers at High Point, N. C., St. Louis, Mo., Cedar Rapids, Iowa, and other scattered points.

The frames are made of wood and are used in the manufacture of upholstered furniture. Usually they are made in sets consisting of a davenport, an arm chair, and a rocking chair. They are not varnished or polished, and only the parts intended to be exposed to view when upholstered, such as the arms and rockers of the chairs and the legs of the davenport, are smooth surfaced. They are made principally of birch, although a small amount of mahogany and maple is used. They are used in what is known as overstuffed furniture and for upholstered furniture with cane seats and backs, the cane being inserted before the frame is shipped to the upholsterer.

Frames move in carloads and less than carloads in all of the classification territories. They are usually prepared for shipment in less than carloads by wrapping or crating, although the classifications do not require that this be done. In making carload shipments from 55 to 65 three-piece sets are usually loaded into the car loose, the chairs being placed in the seat of the davenport. The lading is braced in sections to prevent damage from shifting. Ordinary box cars are used.

Less-than-carload shipments when crated average about 3 pounds per cubic foot, and when loose or in bundles about 2.15 pounds. The average value of a set of furniture frames is between \$25 and \$30 and the average value per pound of shipping weight is 22 cents when loose or in bundles and 13 cents when crated. The usual lading of a 36-foot box car is said by complainant to be about 6,600 pounds, but exhibits introduced by defendants show many instances of carloads weighing less.

The ratings assailed in the several classifications are shown below, together with the uniform ratings requested by complainant:

Articles	Official	South- ern	West- ern	Re- quested
FURNITURE PARTS:				
Frames—				
Chair, other than spring rocking—				
Wooden—				
Set up, in bundles, less than carload.....	3t1	3t1	3t1	D1
Set up, in boxes or crates, less than carload.....	3t1	D1	D1	1½
Set up, loose or in packages, carload minimum weight 10,000 pounds, subject to rule 34.....	2	3	3	3
Couch or lounge—				
Wooden—				
Set up, backs attached—				
Loose or in bundles, less than carload.....	3t1	3t1	3t1	D1
In boxes or crates, less than carload.....	3t1	2½t1	D1	1½
Set up, backs detached or without backs—				
Legs attached—				
Loose or in bundles, less than carload.....	D1	D1	D1	D1
In boxes or crates, less than carload.....	D1	1½	D1	1½
Legs detached—				
Loose or in bundles, less than carload.....	1½	1½	1½	1½
In boxes or crates, less than carload.....	1½	1½	1½	1
Set up, loose or in packages, carload minimum weight 10,000 pounds, subject to rule 34.....	2	3	3	3
Furniture frames, wooden, n. o. i. b. n.—				
Set up, loose or in bundles, less than carload.....	3t1	3t1	3t1	D1
Set up, in boxes or crates, less than carload.....	3t1	D1	D1	1½
Set up, loose or in packages, carload minimum weight 10,000 pounds, subject to rule 34.....	2	3	3	3

All of the evidence introduced related to the reasonableness of the ratings applicable on the fully set-up frames in three-piece sets. The allegations of unjust discrimination and undue prejudice will not, therefore, be further considered, nor will the request for reduced ratings on wooden furniture frames not otherwise indexed by name and on wooden couch or lounge frames with backs detached or without backs.

To show that the less-than-carload ratings on the set-up chair and lounge frames are unreasonable, complainant directs attention to the substantially lower ratings maintained by defendants on wooden rocking chairs, in the white, partly knocked down; wooden rocking chairs, finished, set up; wooden chairs, other than rocking, set up; wooden settees, set up; and organ or piano benches, set up. These commodities were selected by complainant, as being analogous to furniture frames, from the several hundred less-than-carload items listed under "furniture" in the classification. But the testimony of complainant's and defendants' witnesses is conflicting on the important question of the weight density of these articles when packed for shipment, and our conclusions as to the less-than-carload ratings in issue do not rest upon these comparisons.

Complainant also introduced an exhibit contrasting the less-than-carload freight rates on furniture frames under the present classification with the contemporaneous express rates from Chicago to 50 representative points in the United States. The exhibit shows that the first-class express rates applicable on furniture frames roughly approximate two and one-half times the first-class freight rates. To some of the destinations shown the first-class express rate materially exceeds three times the first-class freight rate. To others it is but little in excess of one and one-half times the first-class freight rate. Under the present rate adjustment most of the less-than-carload shipments of furniture frames move by express. That service is much more expeditious and includes pick-up and delivery, which is not a part of the freight service. It is obvious that there should be a higher return to the railroad for the carriage of express matter than it receives upon its freight traffic. Defendants are correct in pointing out that the two services are not directly comparable, but the gist of the matter, nevertheless, is the total transportation charge which the shipper is required to pay, and it is proper to contrast the charges exacted for the lesser freight service with the charges for the transportation of the same articles in the superior express service.

The trend of freight classification for many years, and probably since the beginning, has been toward multiplication and refinement of

commodity descriptions. The consolidated classification to-day provides specific ratings for thousands of articles, and for most of them there are several ratings, the application of which depends upon the form in which the article is prepared for shipment. Many of these ratings are not precisely correct, some of them doubtless are not even reasonably correct; but they were all established in the first instance with some regard for the value, the weight density, the susceptibility to damage, and other transportation characteristics of the commodity under consideration. Defendants state that furniture frames have been given relatively high ratings, principally because they occupy a great deal of car space in proportion to their weight and the soundness of the principle under which high classification ratings are assigned to light and bulky articles is not open to question.

Our recent investigation in *Express Rates, 1922*, 89 I. C. C. 297, developed that in recent years the average weight of express shipments has increased from 34 to 82 pounds, and that much of the traffic in small packages, which once constituted the bulk of the business, has been lost to the parcel-post service; but the change in the character of the traffic has been accompanied by comparatively little expansion of the express classifications. The articles provided with specific ratings in the express classification at present are numbered only in the hundreds. Furniture frames, set up, are there rated as furniture not otherwise specified. Practically all commodities to which specific ratings are not assigned are rated second class if they are articles of food or drink and first class if they are not. The first-class express rates thus apply on many articles of low weight density of high value, or both, and on many others of high weight density and little value. They apply on the rough lumber from which furniture frames are made, as they likewise apply on the finished furniture of which the frames ultimately become a part.

Having regard for the difference in the structure of the freight and express classifications we can not predicate a condemnation of the freight rate for a light and bulky article like furniture frames solely upon a showing that the express rates are lower between many points.

In *Michigan Seating Co. v. G. T. W. Ry. Co.*, 40 I. C. C. 503, we found that the less-than-carload rating of three times first class in the official classification on fiber furniture was not unreasonable. The commodity when wrapped for shipment weighed approximately 3 pounds per cubic foot. Chair and lounge frames when shipped loose or in bundles, in less than carloads, weigh substantially less than 3 pounds per cubic foot. The evidence is convincing that they are easily damaged in transit, particularly when shipped loose

or in bundles, or protected only by wrapping. In our opinion the less-than-carload ratings complained of on set-up chair and lounge frames, loose or in bundles, are not unreasonable.

When crated the weight per cubic foot of chair and lounge frames approximates that of wrapped fiber furniture. Considering the superior protection against damage which crating affords, and considering also that furniture frames are unfinished material, we conclude and find that the less-than-carload rating in the official classification on wooden chair and lounge frames, when set up, in boxes or crates, is and for the future will be unreasonable to the extent that it exceeds or may exceed two and one-half times first class; but that the corresponding ratings in the southern and western classifications are not unreasonable.

Complainant supports its request for the establishment of a reduced carload rating in the official classification by pointing out that the present rating of second class and minimum of 10,000 pounds is also applicable on finished chairs, and that finished couches and lounges are rated second class with a minimum of 12,000 pounds. In the establishment of freight classifications, involving as it does the grouping of all commodities into a limited number of classes, the principle that the unfinished should be rated lower than the finished article must frequently yield to other considerations.

There are 206 articles subject to a carload minimum of 10,000 pounds in the consolidated classification, and they are rated as follows:

	Official	Southern	Western
Higher than first class.....	5	7	4
First class.....	28	30	10
Second class.....	166	129	170
Rule 25.....	1	---	---
Third class.....	6	37	20
Fourth class.....	---	2	2
Sixth class.....	---	1	---

Of the seven commodities rated lower than second class in the official classification, six are empty shipping containers, such as boxes, barrels, and the like, and the seventh, rated rule 25, is children's vehicle wheels. The carload rating for this commodity in the South is first class and in the West second class. Of those commodities in the southern and western classifications rated lower than second class a substantial number likewise are shipping containers, and of the remainder the majority seem to be articles of lower grade, in general, than furniture frames.

In *Leigh Banana Case Co. v. Director General*, 59 I. C. C. 113, we approved the carload rating of third class, minimum 10,000 pounds, in the southern classification on banana-shipping carriers or hampers.

In *Boston Wool Trade Asso. v. A. & S. Ry. Co.*, 64 I. C. C. 365, we prescribed carload ratings of second class, minimum 10,000 pounds, in the official, southern, and western classifications on scoured wool, wool tops, wool noils, and wool waste, in certain forms of packages. In *Bernard Co. v. Director General*, 74 I. C. C. 557, we found not unreasonable the western classification rating of second class, carload minimum 10,000 pounds, on galvanized steel stock-watering fountains. Recently, in *Classification of Automobile Fenders*, 92 I. C. C. 223, decided September 24, 1924, we prescribed second class and a carload minimum of 10,000 pounds in the three classifications on finished automobile fenders when not nested, loose or in packages, and when nested, loose or in bundles. In our opinion that rating and minimum weight is also reasonable for set-up wooden chair or lounge frames in the official classification.

An order will be entered in accordance with our findings herein.

93 I. C. C.

No. 14058

BRADLEY & WOERTZ *v.* NASHVILLE, CHATTANOOGA &
ST. LOUIS RAILWAY ET AL.

Submitted July 2, 1923. Decided November 25, 1924

Rates on empty returned beverage containers, in carloads, from Atlanta, Ga., to Evansville, Ind., and Milwaukee, Wis., found unreasonable. Certain shipments found overcharged. Reparation awarded.

J. D. Patterson, jr., for complainants.

Henry Thurtell for defendants.

REPORT OF THE COMMISSION

DIVISION 3, COMMISSIONERS HALL, CAMPBELL, AND COX

BY DIVISION 3:

Exceptions were filed by complainant to the report proposed by the examiner. Our conclusions differ somewhat from those recommended by him.

Complainants, George T. Bradley and H. F. Woertz, copartners, are wholesale dealers in cereal beverages at Atlanta, Ga., doing business under the firm name of Bradley & Woertz. By complaint filed July 24, 1922, they allege that the rates charged by defendants on empty returned beverage or near-beer containers, in carloads, from Atlanta, Ga., to Evansville, Ind., and Milwaukee, Wis., since August 26, 1920, were, are, and for the future will be unreasonable and unduly prejudicial. We are asked to prescribe reasonable and nonprejudicial rates for the future and to award reparation. Rates will be stated in cents per 100 pounds.

The shipments consisted of empty beverage bottles, packed in barrels or boxes. The shipments to Evansville moved over the Nashville, Chattanooga & St. Louis to Nashville, Tenn., and the Louisville & Nashville beyond. Of the 14 shipments to Milwaukee 12 moved through Cairo, Ill., and the other 2 through Evansville. Of the shipments to Evansville 5, aggregating 103,625 pounds, moved between April 29 and June 29, 1921, inclusive, and 3, aggregating 60,940 pounds, between June 30 and August 11, 1921, inclusive. Of the shipments to Milwaukee 7, aggregating 163,967 pounds, moved between April 16 and June 29, 1921, inclusive, and 7, aggregating

156,899 pounds, between June 30 and September 20, 1921, inclusive. On the shipments to Evansville and via Evansville charges were collected at the applicable class rates, either joint or combination. The shipments which moved to Milwaukee via Cairo, were apparently overcharged as hereinafter shown.

For many years prior to December 30, 1919, empty beer or beverage bottles returned in carloads were rated in southern classification on the basis of one-half of the inbound carload rate on the beer or beverage. A certificate was required to show that the return shipments were of the same character of bottles as those originally received from the consignee of the empty returned bottles. Under the first consolidated classification effective on December 30, 1919, this rating was advanced in southern classification to sixth class. Effective June 30, 1921, the carriers reduced their sixth-class rate from Nashville to Evansville in compliance with *Rates to and from Nashville*, 61 I. C. C. 308. Effective October 10, 1921, by exception to the classification, the rating on empty returned beverage containers was reduced to 66 $\frac{2}{3}$ per cent of the inbound beverage rate. That exception was authorized to become effective September 15, 1921, but was not published in defendant's tariff until October 10, 1921. In official classification the rating was and is fifth class, but, effective January 1, 1922, the lines north of the Ohio River by an exception to the classification reduced the rating to 80 per cent of sixth class, and this basis was made applicable from Evansville to Milwaukee. The details of the rate changes on and after December 30, 1919, are shown in the following table. It will be observed that between December 30, 1919, and October 9, 1921, inclusive, the rates on returned empty containers exceeded the rates on cereal beverages in the opposite direction.

Effective date	Cereal beverages (minimum weight 30,000 pounds)			Empty returned beverage containers				
	Mil- waukee to Evans- ville	Evans- ville to Atlanta	Through combina- tion rate, Mil- waukee to Atlanta	Atlanta to Evans- ville (445 miles)		Evansville to Mil- waukee (374 miles)		Through combina- tion rate, Atlanta to Mil- waukee (819 miles)
				Minimum weight	Rate	Minimum weight	Rate	
	<i>Cents</i>	<i>Cents</i>	<i>Cents</i>	<i>Pounds</i>	<i>Cents</i>	<i>Pounds</i>	<i>Cents</i>	<i>Cents</i>
Dec. 29, 1919-----	25	42. 5	67. 5	10, 000	21. 25	16, 000	25	46. 25
Dec. 30, 1919-----	25	42. 5	67. 5	18, 000	57. 5	18, 000	25	82. 5
Aug. 26, 1920-----	35	53	88	18, 000	72	18, 000	35	107
June 30, 1921-----	35	53	88	18, 000	69	18, 000	35	104
Oct. 10, 1921-----	35	53	88	20, 000	35. 5	18, 000	35	70. 5
Jan. 1, 1922-----	35	53	88	20, 000	35. 5	24, 000	23	58. 5
July 1, 1922-----	31. 5	47. 5	79	20, 000	31. 5	24, 000	20. 5	52

The class rates between Atlanta and Milwaukee were the same via Cairo or Evansville. A commodity rate of 14.5 cents on beer packages, empty, returned, minimum 20,000 pounds, was in effect beyond Cairo between May 23, 1919, and August 25, 1920, inclusive. This rate was increased to 20.5 cents on August 26, 1920, and reduced to 18.5 cents on July 1, 1922. We are of opinion that the rate of 20.5 cents was applicable on complainant's shipments which moved via Cairo. The applicable rate from Atlanta to Milwaukee via Cairo from August 26, 1920, to June 29, 1921, inclusive, was 92.5 cents, and between June 30, 1921, and October 9, 1921, inclusive, 89.5 cents. The applicable rates via Evansville for the same periods were \$1.07 and \$1.04, respectively. Charges were collected on the shipments to Milwaukee via Cairo at the rate of \$1.07 and \$1.04. These shipments were overcharged.

Complainants contend that the rates charged were unreasonable, and that the present basis of 66 $\frac{2}{3}$ per cent of the inbound beverage rate between Atlanta and Evansville and 80 per cent of sixth class from Evansville to Milwaukee does not bear the proper relation to the rates on beverages. Complainants ask establishment of rates on empty beverage containers from Atlanta to Evansville and Milwaukee equal to one-half of the beverage rate in the opposite direction.

At the time the shipments moved the price of cereal beverages per barrel of 10 dozen bottles was \$9.25 f. o. b. Milwaukee and \$8.75 f. o. b. Evansville. The allowance for the same number of empty bottles returned was \$2.50 at Milwaukee and \$3 at Evansville. The value of a carload of cereal beverage was about \$1,200 and the value of a carload of empty returned containers about \$400. A barrel of 10 dozen bottles of beverage weighs approximately 235 pounds, and a barrel of the same number of empty bottles about 130 pounds. The average loading of the shipments to Evansville was 20,548 pounds, and the average loading of the shipments to Milwaukee was 22,848 pounds. Shipments of beverages generally contain about 130 barrels of 10 dozen bottles each, which at the estimated weight of 235 pounds would be 30,550 pounds. The minimum weights are shown in the above table.

The rating of fifth class in official classification was approved by us in *Official Classification Ratings*, 37 I. C. C. 166, and affirmed on rehearing in 46 I. C. C. 383. The fifth-class rating applied also on new bottles. We observed that a substantial movement of old bottles in straight carloads was not disclosed. The contrary is true in this case. As stated, in January, 1922, by exceptions to the official classification the carriers north of the Ohio River accorded 80 per cent of sixth-class rates on movements of returned empty

bottles. In *Official Classification Ratings, supra*, it was shown that from points where new bottles moved in considerable volume, commodity rates lower than sixth class were in effect.

In southern classification the rating on old bottles is now sixth class, minimum 20,000 pounds. Movement under that rating is not shown. Old bottles, other than those returned for refilling, have value only as junk. Old bottles returned for refilling have no commercial value and under Federal laws may be refilled only with the same character of content as that which they originally held. Cereal-beverage bottles are stamped with the manufacturer's name and, unless returned to the manufacturer, are of no use to anyone. Their return to the manufacturer for refilling benefits the carrier because it encourages the use of substantial containers and furnishes additional revenue for the empty-return movement, benefits the manufacturer because it permits the repeated use of the same container, and benefits the public because it makes for a lower cost of the product. In *Reduced Rates on Returned Shipments*, 19 I. C. C. 409, we stated that the rates on returned shipments should not, on principle, be made lower than the rates on the original movement, and that "the return element should be disregarded." In that case we were not dealing with the rates on returned empty containers, and one of the underlying reasons for the decision was that under the practices then existing the original and return movements could not be linked up in a "transit" sense. With respect to the cereal-beverage trade it is self-evident that the return of the empty bottles is contemplated by both consignor and consignee. For that reason and on account of the nonadaptability of these containers to other uses the practice of according rates lower than those on new containers should not be discouraged. The measure of such lower rates can not be made the subject of any hard and fast rule, but must depend, as do all rates, upon the facts and circumstances of record, taking into consideration the low value of the commodity, the volume of movement, and other material elements.

As above shown the rates in southern territory are now on the basis of $66\frac{2}{3}$ per cent of the inbound beverage rate. This basis at the present time results in a rate of 31.5 cents from Atlanta to Evansville and Cairo as compared with the sixth-class rate of 62 cents. Although this practice of basing rates on the empty returned containers upon the rates applicable to the loaded movement has been prevalent for some years in southern territory we are not prepared upon this record to make a finding based upon any definite relationship to the rate on the inbound movement.

We find that during the period from August 26, 1920, to October 9, 1921, both dates inclusive, the rates assailed were unreasonable

to the extent that they exceeded rates based upon $66\frac{2}{3}$ per cent of sixth class to Cairo and Evansville and sixth class beyond, minimum 20,000 pounds; that complainants made the shipments as described and paid and bore the charges thereon; that they have been damaged thereby in the amount of the difference between the charges assessed and those which would have accrued on the basis of the rates herein found reasonable; and that they are entitled to reparation, with interest. Complainants should comply with Rule V of the Rules of Practice, taking into account the outstanding overcharges on any shipments which moved via Cairo, during the above period. As the basis now in effect is lower than that here found to have been reasonable no order for the future is necessary.

93 I. C. C.

No. 13513

STUTT GART RICE MILL COMPANY ET AL. v. ALABAMA
& VICKSBURG RAILWAY COMPANY ET AL.

Submitted September 20, 1923. Decided December 5, 1924

1. Rates on clean rice, in carloads, from milling points in Arkansas to certain destinations in central, southern, and western territories found unreasonable and unduly prejudicial. Reasonable and nonprejudicial rates and bases prescribed.
2. Rates on clean rice, in carloads, from the same points to western termini of trunk-line territory found not unreasonable, but unduly prejudicial. Undue prejudice ordered removed.
3. Rates on clean rice, in carloads, from the same points to points in Oklahoma found not unreasonable or unduly prejudicial.

Edward A. Haid for complainants.

Jas. S. Davant and *J. T. Humphreys* for Memphis Freight Bureau; and *Carl Giessow*, *Edgar Moulton*, and *H. Y. Taylor* for New Orleans Joint Traffic Bureau, interveners.

W. F. Dickinson, *W. T. Hughes*, *A. B. Enoch*, *J. R. Turney*, *A. H. Kiskaddon*, *Charles J. Rixey*, and *H. L. Walker* for defendants.

REPORT OF THE COMMISSION

DIVISION 1, COMMISSIONERS MCCORD, LEWIS, AND McMANAMY

McMANAMY, *Commissioner*:

Exceptions were filed by the parties to the report proposed by the examiner, and oral argument has been had. We have reached conclusions differing somewhat from those proposed by the examiner.

Complainants are engaged in milling rice at Stuttgart, De Witt, Lonoke, Carlisle, and Wheatley, Ark. They allege that the rates on clean rice, in carloads, from those points to all destinations in official, southern, and western classification territories are unreasonable, and that the rates on clean rice, in both carloads and less than carloads, from the same points to all destinations east of the Missouri and Mississippi Rivers are unjustly discriminatory and unduly prejudicial as compared with the corresponding rates from New Orleans, La., Memphis, Tenn., and interior Louisiana.

Since the filing of the complaint, defendants made certain changes in the carload rates, effective October 21, 1922, from Arkansas points

to points in Ohio, in Indiana, except Evansville, Terre Haute, and Indianapolis, in Illinois, except East St. Louis and Cairo, and in Wisconsin, Michigan, Minnesota, Iowa, North Dakota, and South Dakota, which, although not entirely satisfactory, were accepted by complainants, and this portion of the complaint was abandoned. Practically no evidence was offered with respect to the less-than-carload rates, nor with respect to rates to Texas, Louisiana west of the Mississippi River, Florida, Virginia, territory west of the States of Nebraska, Kansas, and Oklahoma, and territory east of the western termini of trunk-line territory. This report is confined to the carload rates from the Arkansas points named to East St. Louis, Cairo, Evansville, Terre Haute, Indianapolis, western termini of trunk-line territory, all points in southern territory except in Florida and Virginia, and all points in Missouri, Kansas, Nebraska, and Oklahoma. The New Orleans Joint Traffic Bureau and the Memphis Freight Bureau intervened in opposition to the complaint. Rates and differences in rates are stated in cents per 100 pounds.

Rice is extensively grown in interior Louisiana, southeastern Texas, California, and east central Arkansas. Of the total production in 1920, 47 per cent was grown in Louisiana, 18 per cent in Texas, 16.5 per cent in Arkansas, and 18 per cent in California. The production in Arkansas is confined to a comparatively small area, the average distance from complainants' mills to Memphis being 101 miles. The rates on clean rice from this area are grouped to interstate destinations. The producing territory in Louisiana and Texas is a continuous field extending along the Gulf of Mexico from Jeanerette, La., on the east to a point some distance southwest of Houston, Tex., and for rate-making purposes is divided at the State line into two groups, except to Vicksburg, Miss., and New Orleans, to which the Texas group is subdivided into two groups. Rice mills are scattered throughout both of these producing fields. The most northern mill in the interior Louisiana group is 326 miles from the most southern mill in Arkansas. Rice mills are also located at New Orleans, and there is one mill at Memphis.

Complainants' principal competition in the destination territory covered by the complaint is with mills in New Orleans, interior Louisiana, and Memphis. New Orleans has been for many years the leading market. Rice millers in interior Louisiana and New Orleans, because of their proximity to the largest market and to the Gulf ports, have natural advantages which are denied complainants, the most important of which is the export market. About 60 per cent of the rice grown in this country is exported. Because of their geographical location complainants have been unable to engage to any appreciable extent in the export trade.

New Orleans was the first milling point and thus originally pivotal in the rate structure on clean rice. When the rice mills were constructed in interior Louisiana, Texas, and Arkansas, the rates therefrom were made with relation to the rates from New Orleans. The first rates on clean rice were from New Orleans to Ohio and Mississippi River crossings, which were increased 2 cents in 1908. In 1916 a further increase of 5 cents was found justified in *Rice from Texas and Louisiana*, 40 I. C. C. 285. At the time of that decision commodity rates on clean rice had become effective from New Orleans to destinations in nearly all sections of the country.

In *Mutual Rice Trade & Devel. Asso. Houston v. I. & G. N. R. R.*, 23 I. C. C. 219, we approved rates on clean rice from Texas 10 cents higher than from New Orleans to central territory east of the Indiana-Illinois State line, 5 cents higher to points in Illinois, and the same as New Orleans to the Pacific Coast, and required a readjustment to the Southeast. In *Lake Charles Rice Milling Co. v. A. & N. Ry. Co.*, 63 I. C. C. 18, rates 5 and 6.5 cents prior and subsequent to June 25, 1918, less than the New Orleans combination, were prescribed from Lake Charles, a point in the interior Louisiana group, to the Southeast.

In 1904 or 1905, when mills were constructed in Arkansas, rates therefrom were made less than from interior Louisiana by 5 cents to points in central and trunk-line territories, except St. Louis, Mo., East St. Louis, Cairo, and Thebes, Ill., 6 cents to St. Louis and East St. Louis, 9 cents to Cairo and Thebes, and 5 cents to Minnesota, Iowa, and Missouri, except points on the Missouri River, and the same as from interior Louisiana to destinations on and west of the Missouri River, including Kansas, Oklahoma, North Dakota, and South Dakota. No through rates were in effect from Arkansas points to Atlantic seaboard territory, and the lowest combinations applied. A proportional rate of 10 cents, which under the subsequent general increases and reduction is now 15.5 cents, was established from Arkansas points to Memphis applicable on clean rice to southern territory, except Virginia, to which the lowest combination of local rates applied.

The rice mill at Memphis commenced operations in 1911. The rates from Memphis to the Ohio River and points north thereof bear a relationship to the rates from New Orleans, prescribed in *Memphis Freight Bureau v. I. C. R. R. Co.*, 30 I. C. C. 471.

Rates from Arkansas points, constructed on the general bases above outlined, were in effect in the latter part of 1917 when *Arkansas Rice Shippers Traffic Bureau v. A. A. R. R. Co.*, 47 I. C. C. 566, was decided. That case presented in many respects the same issues involved in this proceeding. Complainant therein attacked

the rates on clean rice and rice products from the Arkansas group to all points in official classification territory, western trunk-line territory, and Oklahoma as unreasonable and unduly prejudicial by comparison with corresponding rates from Memphis, New Orleans, and interior Louisiana and Texas points. The allegations there, as here, were predicated largely on the fact that the distances from Arkansas to the destination territories referred to are less than from New Orleans and interior Louisiana. We therein pointed out that the primary object sought to be attained when rates on clean rice from the producing fields were first established was to enable the millers in each field to reach the consuming markets upon substantially equal terms, and that distances, therefore, were largely ignored and the rates established on the group basis. The group adjustment, considered as a whole, was not found to be unduly prejudicial to the Arkansas shippers, and, except to Oklahoma, the rates therein assailed were shown to be unreasonable only in instances where they exceeded the aggregates of the intermediates. Reasonable rates were prescribed to certain points in Oklahoma. The rates from Arkansas points to southern territory were not in issue in that case.

Since that decision the relative adjustment between the competing territories has been changed by the general increases and reductions; by increases in the rates from New Orleans under *Rates to, from, and between Points South of the Ohio River*, 64 I. C. C. 306, and in the rates from interior Louisiana to Memphis, Vicksburg, to the Southeast, and to Atlantic seaboard territory under *Lake Charles Rice Milling Co. v. A. & N. Ry. Co.*, *supra*, and by the revision effective October 21, 1922, in the rates from Arkansas points.

Complainants contend that in establishing the rates relatively, and ignoring distance, defendants have unlawfully deprived them of their natural advantage due to their geographical location, and have given their competitors at New Orleans, Memphis, interior Louisiana, and Texas an undue preference and advantage; that it is unlawful for defendants to ignore the element of distance and establish rates relatively for the purpose of enabling all to compete in the various markets; and that the Arkansas mills should be accorded reasonable rates which will give them the full benefit of their natural advantage of geographical location.

The revision of October 21, 1922, was an attempt by the carriers to satisfy this complaint. The principal changes in the previous adjustment from Arkansas points are the extension of the Arkansas-Memphis proportional rate of 15.5 cents to apply also on clean rice to points in Virginia, trunk-line, and New England territories, and eastern Canada; publication of through rates, 15.5 cents over Memphis, current rates as maxima, to central territory east of the

Indiana-Illinois State line; and the establishment of rates 9 cents less than from interior Louisiana to the western termini of trunk-line territory, 7.5 cents less to points in western trunk-line territory east of the east bank of the Missouri River and west of the west bank of the Mississippi River, and 9 cents, maximum 2.5 cents under New Orleans, to points in Illinois, Wisconsin, the Upper Peninsula of Michigan, and on the Mississippi River north of St. Louis. While the rates from Arkansas to a few points were increased, the general effect of that revision, as well as of the other changes made since 1917, was to accord to Arkansas millers a more favorable relative adjustment.

Complainants state that in *Arkansas Rice Shippers Traffic Bureau v. A. A. R. R. Co.*, *supra*, the Arkansas shippers assumed that the fixing of a relationship between the Arkansas and interior Louisiana groups was proper and that few distance comparisons were presented in that case other than to determine what that relationship should be. In the instant case, however, complainants have made exhibits and introduced testimony bearing upon the alleged injustice of the present relationship, and they vigorously contend that the rates assailed are unreasonable and that their geographical location entitles them to a better relative adjustment of rates than they have thus far been accorded.

In order to eliminate the alleged undue prejudice complainants advocate the adoption of two distance scales of rates, which are predicated upon a distance scale prescribed on rough rice in *Rice from Texas and Louisiana*, 43 I. C. C. 29, and other cases, for application from Arkansas to Memphis and between points in Texas, Louisiana, and Arkansas. That scale advanced by steps of 1 cent to a rate of 20 cents for distances of 425 and over 375 miles. In a report on rehearing in that case, 49 I. C. C. 172, we prescribed a rate of 15 cents on clean rice from Arkansas milling points to Memphis, which was 4 cents higher than the contemporaneous rate on rough rice from Stuttgart to Memphis under the prescribed scale. Using these expressions as a basis, complainants have compiled scales of rates to apply on clean rice by extending the rough-rice scale to 1,975 miles by progressive steps of 1 cent for every additional 75 miles, adding 4 cents to the rates thus arrived at, and applying thereto the subsequent general increases and reduction. One of the scales is proposed for intraterritorial application west of the Mississippi River and the other for interterritorial application from Arkansas points to destinations east of the river. The two scales differ only to the extent of the difference in the percentages of the general 1920 increase, the intraterritorial scale being increased 35 per cent and the interterritorial scale 33 $\frac{1}{3}$ per cent. Aside from
93 I. C. C.

this difference no consideration was given by complainants to the varying transportation conditions east and west of the Mississippi River. The scales commence at 14 cents for distances of 20 miles and under, and by steps of from 1 to 2 cents progress to 69 cents under the intraterritorial scale and 68 cents under the interterritorial scale for distances of 1,975 and over 1,900 miles. Complainants emphasize their belief that the rates under their proposed scales are higher than reasonable, but they advocate their adoption because of our expressions above referred to.

Defendants contend that the rates assailed are not unreasonable or unduly prejudicial, and they and interveners contest the adoption of distance scales and the consequent disruption of the group adjustment from the producing fields.

The average short-line distances from the milling points in the Arkansas group to interstate destinations are in all instances about the same as the short-line distances from Stuttgart to the same points. The principal Arkansas mills are located at Stuttgart, and that point will be used as representative of the Arkansas group. Lake Charles is representative of the interior Louisiana group, except on traffic to New Orleans and the Southeast, to which the distance from Crowley more nearly represents the average from the group. Aside from Vicksburg and New Orleans, to which points Texas is divided into two groups taking different rates, Houston is representative of Texas milling points.

RATES TO MEMPHIS, VICKSBURG, AND NEW ORLEANS

The following table compares the rates from Stuttgart to Memphis, Vicksburg, and New Orleans, and earnings thereunder, with rates and earnings from interior Louisiana and Texas to the same points:

From—	To—	Distance	Rate	Ton-mile earnings
		<i>Miles</i>	<i>Cents</i>	<i>Mills</i>
Stuttgart, Ark.....	Memphis, Tenn.....	103	23	44.6
Do.....	do.....	103	¹ 15.5	30.1
Do.....	Vicksburg, Miss.....	206	34.5	33.5
Do.....	New Orleans, La.....	432	43	19.9
Lake Charles, La.....	Vicksburg, Miss.....	273	27.5	20.1
New Orleans, La.....	do.....	235	29	24.7
Lake Charles, La.....	Memphis, Tenn.....	435	38.5	17.7
New Orleans, La.....	do.....	396	33.5	16.9
Crowley, La.....	New Orleans, La.....	166	24.5	29.5
Texas Group 3.....	Vicksburg, Miss.....	402	42	20.9
Do.....	New Orleans, La.....	329	26	15.8
Houston, Tex.....	Memphis, Tenn.....	554	38.5	13.9

¹ Proportional rate.

Under the maximum scale of rates on rough rice prescribed in *City of Memphis v. C., R. I. & P. Ry. Co.*, 39 I. C. C. 256, the rate

on rough rice from Stuttgart to Memphis became 11 cents. In *Rice from Texas and Louisiana, supra*, a local rate of 15 cents, or 4 cents higher than on clean rice, was prescribed from milling points in Arkansas to Memphis. That rate, with the subsequent general increases and reduction applied thereto, is now 23 cents. The present rate on rough rice is 17 cents, and by applying the same difference of 4 cents the rate on clean rice would be 21 cents. Complainants compare the local rate to Memphis with the rates from competing points to Mississippi River crossings on basis of prorated distance. These and other comparisons indicate that the present local rate to Memphis is too high.

The rate from Stuttgart to Vicksburg is 8.5 cents higher than the rate from Texas Group 3 to New Orleans for a haul 123 miles shorter, and is 1 cent higher than from New Orleans to Memphis for almost twice the distance from Stuttgart to Vicksburg. The rate from Stuttgart to Vicksburg is 7 cents higher than the rate from Lake Charles, although the haul is 67 miles less. Under complainants' proposed scale this rate would become 29 cents. The distance of 206 miles shown in the above table is computed over the St. Louis Southwestern, hereinafter called the Cotton Belt, to Pine Bluff, Ark., Missouri Pacific to Tallulah, La., and the Vicksburg, Shreveport & Pacific beyond.

Under complainants' proposed scale the rate to New Orleans would be 38 cents, but they contend that a rate of 30 cents would be reasonable. The distance of 432 miles from Stuttgart to New Orleans is over the Vicksburg route above described and the Illinois Central beyond, a four-line haul. The distance over the published route from Stuttgart to New Orleans is 465 miles. The rate from Memphis to New Orleans is 33.5 cents for 396 miles and from Lake Charles to Memphis, 38.5 cents for 435 miles. Defendants recently established a rate of 31 cents from Stuttgart to New Orleans for exports.

The proportional rate from Arkansas points to Memphis is the only proportional rate published from any of the producing groups to Mississippi River crossings. It is a component in the through rates from Arkansas to points in southern and eastern territories. These through rates are here assailed, and no good purpose would be served by separately considering the proportional factor to Memphis.

We find that the rate to New Orleans is not unreasonable but that the rates to Memphis and Vicksburg are unreasonable to the extent indicated in the summary.

RATES TO CAIRO, ST. LOUIS, AND EAST ST. LOUIS

The rates from New Orleans, Memphis, and the producing fields to East St. Louis are the same as to St. Louis. A comparison of the rates, distances, and differences in rates from Stuttgart, New Orleans, and Lake Charles to East St. Louis and Cairo with the same information to points in Illinois and other States, taken from exhibits of record, is made in an appendix hereto. The rates from Stuttgart to East St. Louis and Cairo are only 4 and 4.5 cents, respectively, less than the rates from New Orleans, for differences in distance in favor of Stuttgart of 346 and 293 miles, respectively, and 9 and 13.5 cents less than the corresponding rates from Lake Charles for differences in distance of 335 and 332 miles, respectively. To points in Iowa the rates from Stuttgart range from 2.5 cents at Keokuk to 15.5 cents at Sioux City under New Orleans, and from 2.5 cents at Cedar Rapids to 10.5 cents at Keokuk under Lake Charles.

The present rates from Memphis to Cairo and St. Louis are, respectively, 26.5 and 33.5 cents, or 8.5 and 9.5 cents less than from Stuttgart. The rate from New Orleans to Memphis is 33.5 cents for 396 miles as compared with the present rate from Arkansas to Cairo of 35 cents for 273 miles. The Memphis intervener calls attention to the present difference of 11 cents, Memphis under Stuttgart, at Chicago, Ill., and to the generally accepted principle that differentials between rate groups should decrease as distance increases.

Complainants compare the ton-mile earnings of 25.6 and 23.1 mills under the rates from Stuttgart to Cairo and St. Louis, 273 and 372 miles, with similar earnings from Lake Charles and Houston to lower Mississippi River crossings, ranging from 22.4 mills under the rate from Lake Charles to New Orleans, 218 miles, to 14.3 and 20.8 mills, respectively, under the rates from Houston to New Orleans and Vicksburg, 362 and 404 miles. Traffic from Arkansas to St. Louis and East St. Louis over the Cotton Belt moves via the Thebes gateway.

We find that the rate to Cairo is not unreasonable but that the rates to St. Louis and East St. Louis are unreasonable and unduly prejudicial to the extent indicated in the summary.

RATES TO EVANSVILLE, TERRE HAUTE, AND INDIANAPOLIS

The rates from Stuttgart are 50 cents to Evansville, 420 miles, and 56 cents to Terre Haute and Indianapolis, 482 and 550 miles, respectively. Complainants contend that the spread of 6 cents between the rates to Evansville and to Terre Haute and Indianapolis is too great. Under their proposed scale this spread would be reduced to 3 cents. As evidence that these rates are unreasonable complainants

point to the fact that while the rates from New Orleans are 20 cents less than the Memphis combination, the rates from Stuttgart are only 4.5 cents to Evansville and 6.5 cents to Terre Haute and Indianapolis less than the combination on Memphis. The present rates from Memphis to these points are 16.5 cents less than from Stuttgart for a difference in distance of only 103 miles, a greater spread by 1 cent than under the proportional rate from Stuttgart to Memphis on traffic to southern and eastern territories.

A comparison of the rates from Stuttgart, on the one hand, and from New Orleans and Lake Charles, on the other, to Evansville, Terre Haute, and Indianapolis, as well as to Anderson and Fort Wayne, Ind., and points in near-by States, compiled from exhibits of record, appears in the appendix, and shows that the assailed rates are higher than the rates from Stuttgart for comparable hauls to other points in Indiana and to destinations in Illinois and Ohio. They are higher than rates for similar or longer hauls from Stuttgart to points in western trunk-line territory.

The original basis of 5 cents under interior Louisiana to points in central territory has been generally departed from, the present spread ranging from about 9 cents at points east of the Indiana-Illinois State line, except Terre Haute and Indianapolis, at which it is 12 cents, to about 10.5 cents at points in Illinois, except East St. Louis and Cairo. New Orleans is 3 cents under Stuttgart at Evansville, Terre Haute, and Indianapolis; at Anderson and Fort Wayne the spread is only 1 cent for an average difference in distance in favor of Stuttgart of 308 miles; and at Springfield, Quincy, and other points in Illinois the rate from New Orleans is 2.5 cents higher than from Stuttgart.

We find that the rates assailed to Evansville, Terre Haute, and Indianapolis are unreasonable and unduly prejudicial to the extent indicated in the summary.

RATES TO WESTERN TERMINI OF TRUNK-LINE TERRITORY

The present rates from Stuttgart to the western termini of trunk-line territory compare favorably with rates from Stuttgart to other points in Pennsylvania, West Virginia, and Ohio.

The rates from Memphis to Pittsburgh, Pa., and Buffalo, N. Y., are 12 cents less than from Stuttgart. Prior to the revision of October 21, 1922, this difference was 10 cents. Under that revision the proportional rate of 15.5 cents from Stuttgart to Memphis became applicable on traffic to destinations east of the western termini. Complainants point to the spread of 9 cents between Memphis and Stuttgart at Cairo and contend that the spread should be at least no greater for the longer hauls to the western termini.

The differences between the present rates from Stuttgart and from New Orleans and Lake Charles to representative western termini points appear in the appendix. The spread between Stuttgart and Lake Charles is 9 cents for differences in distance of 374 miles at Buffalo and 340 miles at Pittsburgh. This spread is the same as at points in central territory for much shorter distances. The rates from New Orleans are 6 cents at Parkersburg, W. Va., and 5 cents at other western termini points less than from Stuttgart, although the hauls from New Orleans are longer by 233 miles to Parkersburg and 260 miles to Buffalo.

We find that the rates assailed to the western termini of trunk-line territory are not unreasonable but are unduly prejudicial to the extent indicated in the summary.

RATES TO SOUTHERN TERRITORY

The Southeast consumes about 40 per cent of the rice consumed in this country. About 37 per cent of complainant's products is shipped to this territory.

The rates from Stuttgart to southern territory are generally the Memphis combinations, composed of the proportional rate of 15.5 cents to Memphis and the Memphis rates beyond. The rates from Memphis to this territory have been for many years and are at present generally the same, except to points to which the difference in distance is substantial, as from New Orleans. Defendants contend that the New Orleans rates have been depressed by water competition through south Atlantic and Gulf ports; and that although this water competition has ceased to exist, except perhaps at south Atlantic ports, the rates from New Orleans and Memphis have not been increased more than rates generally throughout southern territory. Under appropriate fourth-section authority the carriers continue to maintain rates to various south Atlantic ports which are lower than the rates to intermediate points.

Following *Mutual Rice Trade & Devel. Asso. Houston v. I. & G. N. R. R.* and *Lake Charles Rice Milling Co. v. A. & N. Ry. Co.*, *supra*, through rates were established from Texas and interior Louisiana to the Southeast which are now from 4 to 7 cents less than the New Orleans combinations. The present rates from Stuttgart to southern territory are 7.5 cents less than the full Memphis combinations. New Orleans has transit under the through rates from Texas and interior Louisiana, for which privilege the New Orleans millers pay an additional transit charge of 2.5 cents per 100 pounds, and since the movement of rice from Arkansas points to New Orleans is small, comparatively little clean rice moves from New Orleans to southern territory under local rates from that point.

Rates and distances from Stuttgart, New Orleans, and Lake Charles to representative points in southern territory, and the present relationship between the rates from these competing points, taken from exhibits of record, are set out in the appendix. As heretofore stated, the distance from Crowley is more nearly representative of the average distance from the interior Louisiana group to southern territory, and, except to destinations to which the short line makes through Vicksburg, a deduction of 52 miles, the distance from Lake Charles to Crowley, should be made from the distances shown in the appendix from Lake Charles to points in this territory. The comparison shows that the rates from interior Louisiana are higher than from Arkansas by amounts ranging from 5.5 to 13.5 cents in Tennessee, except that to Bristol the rate from Stuttgart is 3 cents higher than from interior Louisiana; from 4 to 10 cents higher in Kentucky; from 3.5 to 12 cents higher in Mississippi; from 0.5 cent lower to 7.5 cents higher in Alabama; 2.5 and 3 cents higher in Georgia; from 3 to 8.5 cents higher in South Carolina; and from the same to 8.5 cents higher in North Carolina. The distances from Crowley to points in the Southeast are generally greater than from Stuttgart by a few miles in Alabama to over 300 miles in Tennessee and Kentucky.

The differences between the rates from New Orleans, on the one hand, and Arkansas and interior Louisiana on the other, are more nearly uniform than the differences between the rates from Arkansas and interior Louisiana. The rate advantage of New Orleans in southern territory is portrayed in the appendix. It is sufficient to point out that the spread between the present rates from New Orleans and Arkansas ranges from 16 cents in favor of Arkansas at Nashville, Tenn., to 1.5 cents in favor of New Orleans at Greenville, Miss.; 24 cents at Frankfort, Ky.; 18.5 cents at points in Alabama; 15.5 cents at points in Georgia and South Carolina; and 19 cents at Goldsboro, N. C.

Complainants make many comparisons of these rates with rates from comparable distances from Memphis, New Orleans, Lake Charles, and Houston to southern territory, and with equal or lower rates from the same points, except Memphis, to destinations in western trunk-line and central territories. Comparisons by defendants, on the other hand, show that the rates from Stuttgart and De Witt to points in the Southeast are in some instances higher, but in most instances lower, than rates cited by them for comparable distances from Orange, Tex., New Iberia, La., Lake Charles, Memphis, and New Orleans to points in Arkansas, Oklahoma, and Texas. The percentage relationship of the rates on rice to the first-class rates is 93 more favorable from New Orleans than from Stuttgart.

By multiplying the percentage which the haul on Arkansas traffic east of Memphis is of the haul from New Orleans with the rate from New Orleans and adding to the product a factor west of Memphis which complainants consider reasonable, they arrive at various indications as to what the rates from Stuttgart should be. The rates which would result under complainants' proposed distance scale are set out in the appendix. The comparisons of record show that the rates from Arkansas to the South are too high in comparison with rates from other producing points.

Efforts were made at the hearing to show that the total cost of the inbound movement of the rough rice plus the outbound movement of clean rice was more or less to one mill than to another. For instance, the Memphis mill shows that 100 pounds of clean rice cost it 21 cents more than it does its Arkansas competitors, and this intervener accordingly contends that its rates should be that much lower than the rates from Arkansas mills. This complaint brings in issue only the rates on clean rice from Arkansas points and their relationship to the rates from competing mills. It is not our function to attempt to equalize milling costs even if it were possible to do so.

We find that the rates to representative points in southern territory, except in Florida and Virginia, are unreasonable and unduly prejudicial to the extent indicated in the summary.

RATES TO WESTERN TERRITORY

The destination territory west of the Mississippi River here under consideration includes all points in the States of Missouri, Kansas, Nebraska, and Oklahoma. A statement of the rates and distances from Stuttgart in comparison with the rates and distances from New Orleans and Lake Charles, taken from exhibits of record, appears in the appendix. A study of that statement reveals a marked lack of uniformity in these rates. For illustration, the rate of 43 cents to Poplar Bluff, Mo., 184 miles, also applies to Springfield, Mo., and St. Louis, 327 and 372 miles; the rate to Omaha, Nebr., is only 12 cents higher than to Poplar Bluff for 507 miles longer haul; to Coffeyville, Kans., 368 miles, the rate is 62.5 cents, and the same rate applies to Topeka, Kans., 558 miles, but to Fremont, Nebr., 759 miles, the rate is 59.5 cents.

A similar lack of uniformity is apparent in the relationship between the rates from Arkansas, on the one hand, and the rates from interior Louisiana and New Orleans, on the other. Illustrating, the rates from Stuttgart to Grand Island and Kearney, Nebr., are 1 cent and 0.5 cent, respectively, higher than the corresponding rates from New Orleans, while to Hastings, Nebr., and Dodge City, Kans.,

the rates from Stuttgart are 7 cents and 26.5 cents, respectively, under the New Orleans rates. As previously stated, the rates on clean rice from Arkansas points were originally made 5 cents less than interior Louisiana to destinations in Missouri, except points on the Missouri River, and the same as from interior Louisiana to destinations on and west of the Missouri River, including Kansas, Nebraska, and Oklahoma. The appendix shows that, with the exception of points in Nebraska and on the Missouri River, these bases are no longer observed and the present rates from Stuttgart exceed the corresponding rates from interior Louisiana by amounts ranging from 7 to 14.5 cents in Missouri, from no excess to 19 cents in Kansas, and from no excess to 15 cents in Oklahoma. The differences in distance from Lake Charles and Stuttgart range from 348 miles at Poplar Bluff to 250 miles at Kansas City in Missouri; from 194 miles at Pittsburg to 223 miles at Salina in Kansas; 248 miles at Omaha and 216 miles at other points in Nebraska; and from 67 miles at Ardmore to 217 miles at Enid in Oklahoma.

Comparisons were offered by complainants with rates from competing points to Mississippi River and interior destinations for comparable distances, and with rates from and to other points in western territory. Defendants show that the present relationship between the rates from Arkansas and interior Louisiana is more favorable to complainants than it was under the rates in effect on June 1, 1915.

While little evidence was introduced respecting the rates to Oklahoma, they appear relatively high in comparison with those from Memphis and interior Louisiana. The rates to all Oklahoma points are specifically attacked in No. 13954, *Alton Mercantile Co. v. A. & W. Ry. Co.*, now pending. Upon this record the rates to Oklahoma are not shown to be unreasonable. This finding is without prejudice to a finding in the above case on a more comprehensive record.

We find that the rates to representative points in Missouri, Kansas, and Nebraska are unreasonable and unduly prejudicial to the extent indicated in the summary. Rates to points in Oklahoma are found not unreasonable.

SUMMARY

As previously pointed out, the rice adjustment from all competing points, but especially from Arkansas points as compared with New Orleans and interior Louisiana, has materially changed since our decision in *Lake Charles Rice Milling Co. v. A. & N. Ry. Co.*, *supra*. The present record clearly shows that many of the rates

assailed are unreasonably high and unduly prejudicial to Arkansas shippers and unduly preferential of mills located at competing points.

The Memphis intervener insists that the present manner of making rates to points in southern territory from Arkansas based over Memphis is proper and that the present proportional rate to Memphis is already too low. The New Orleans intervener urges that the present adjustment be not disturbed. It also contends that while the rates from New Orleans are relatively much lower than from the Arkansas points, they are not used to any appreciable extent. It states that through rates from interior Louisiana to ultimate destination are in most cases used by New Orleans interests in connection with transit arrangements.

The adjustment wholly lacks any semblance of uniformity. A consistent and reasonable structure can not be constructed by relating the rates from Arkansas points to either Memphis, New Orleans, or interior Louisiana. If the rates are based on Memphis they would be out of line with New Orleans and Lake Charles; and if based on New Orleans they would be improperly related to Memphis. A comprehensive comparison of the present rates with those which would result under complainants' proposed scales leaves no doubt that the rates under those scales, even if differences in rate levels and transportation conditions in the various territories could be disregarded, would in most instances be much too low.

The Arkansas mills are entitled to reasonable and nonprejudicial rates and the evidence shows that the carriers in making rates have largely ignored distances in an effort to somewhat equalize conditions. The right of complainants to the natural advantages of their geographical location can not be taken away from them by rate adjustments and the wide differences in distances between the various fields to common destinations must be recognized.

Upon a consideration of all the facts of record, we are of the opinion and find that on clean rice, in carloads, from points in Arkansas:

1. The rate to New Orleans is not unreasonable, but that the local rate to Memphis and the rate to Vicksburg are, and for the future will be, unreasonable and unduly prejudicial to the extent they exceed 22 and 32 cents, respectively.

2. The rate to Cairo, Ill., is not unreasonable, but that the rates to the points named below are, and for the future will be, unreasonable and unduly prejudicial to the extent they exceed the following, in cents per 100 pounds:

To East St. Louis, Ill.....	41 cents
To Evansville, Ind.....	45 cents
To Terre Haute, Ind.....	49 cents
To Indianapolis, Ind.....	50 cents

3. The rates to the representative points enumerated below in southern territory and in Missouri, Kansas, and Nebraska are, and for the future will be, unreasonable and unduly prejudicial to the extent they exceed the following, in cents per 100 pounds:

To—	Rate	To—	Rate
	<i>Cents</i>		<i>Cents</i>
Ashland, Ky.....	63	Darlington, S. C.....	66
Frankfort, Ky.....	53	Asheville, N. C.....	57
Paducah, Ky.....	37	Greensboro, N. C.....	65
Nashville, Tenn.....	42	Goldsboro, N. C.....	71
Bristol, Tenn.....	57	Poplar Bluff, Mo.....	32
Chattanooga, Tenn.....	46	West Plains, Mo.....	34
Greenwood, Miss.....	35	Springfield, Mo.....	42
Greenville, Miss.....	35	St. Louis, Mo.....	41
Birmingham, Ala.....	42	Coffeyville, Kans.....	45
Selma, Ala.....	46	Pittsburg, Kans.....	49
Montgomery, Ala.....	48	Topeka, Kans.....	56
Atlanta, Ga.....	51	Salina, Kans.....	61
Albany, Ga.....	55	Dodge City, Kans.....	65
Waycross, Ga.....	60	Hastings, Nebr.....	67
Anderson, S. C.....	57	Grand Island, Nebr.....	69
Orangeburg, S. C.....	64	Kearney, Nebr.....	71

The record is not sufficiently complete to enable us to determine the rate which should apply to each point in the destination territory. Defendants will be expected to revise the rates, in addition to those specifically prescribed, from the Arkansas points to points in Missouri, Kansas, and Nebraska, and to points in southern territory, except Virginia and Florida, wherever necessary to accord with the specific rates herein found reasonable. The rates prescribed will be used as a guide and rates graded in at intermediate points giving due regard for distance.

4. The rates to points named below are not unreasonable but are, and for the future will be, unduly prejudicial as follows:

To—	To extent they exceed—
Western termini of trunk-line territory.....	5 cents under the New Orleans rates.
Kansas City and Moberly, Mo.....	11 cents under Lake Charles rates.
Omaha and Fremont, Nebr.....	10 cents under Lake Charles rates.

The rates from New Orleans, Memphis, and interior Louisiana should be revised where necessary to reflect a consistent adjustment in harmony with these conclusions.

An appropriate order will be entered.

COMMISSIONER McCHORD dissents.

93 I. C. C.

APPENDIX

Comparison of rates from Louisiana points with rates from Stuttgart, Ark.

To—	From Stuttgart, Ark.			From New Orleans, La.				From Lake Charles, La.		
	Dis- tance	Pres- ent rate	Com- plain- ants' pro- posed scales	Dis- tance	Rate	Over Stutt- gart	Under Stutt- gart	Dis- tance	Rate	Over Stutt- gart
	Miles	Cents	Cents	Miles	Cents	Cents	Cents	Miles	Cents	Cents
Illinois:										
East St. Louis	369	43	34.5	715	47	4	-----	704	52	9
Cairo	273	35	32	566	39.5	4.5	-----	605	48.5	13.5
Springfield	468	50.5	38	814	53	2.5	-----	799	61	10.5
Quincy	512	50.5	39	858	53	2.5	-----	841	61	10.5
Indiana:										
Evansville	415	50	36	704	47	-----	3	746	59	9
Terre Haute	521	56	39	800	53	-----	3	833	68	12
Indianapolis	550	56	39	872	53	-----	3	898	68	12
Anderson	615	56	41	926	55	-----	1	966	65	9
Fort Wayne	633	56	42.5	986	55	-----	1	984	65	9
Ohio:										
Cincinnati	603	54	41	836	50.5	-----	3.5	943	63	9
Toledo	748	61.5	43.5	1,037	56.5	-----	5	1,152	70.5	9
Youngstown	908	61.5	47	1,141	56.5	-----	5	1,251	70.5	9
Western termini:										
Pittsburgh, Pa.	921	61.5	47	1,157	56.5	-----	5	1,261	70.5	9
Buffalo, N. Y.	1,021	61.5	50	1,281	56.5	-----	5	1,395	70.5	9
Parkersburg, W. Va.	798	62.5	45	1,031	56.5	-----	6	1,138	71.5	9
Kentucky:										
Ashland	800	67.5	45	878	56.5	-----	11	1,096	71.5	4
Lexington	676	53.5	42.5	754	50.5	-----	3	972	63.5	10
Louisville	480	51	39	809	47	-----	4	815	59.5	8.5
Frankfort	554	74.5	41	874	50.5	-----	24	880	65	19.5
Paducah	275	46.5	32	562	39.5	-----	7	601	56.5	10
Tennessee:										
Memphis	103	23	23	396	33.5	10.5	-----	435	30.5	7.5
Nashville	347	46	34.5	623	62	16	-----	673	59.5	13.5
Bristol	658	71.5	42.5	739	49.5	-----	22	957	68.5	13
Chattanooga	420	51	36	498	38.5	-----	12.5	716	56.5	5.5
Mississippi:										
Greenwood	244	40	30	393	31.5	-----	8.5	497	44.5	4.5
Greenville	260	33	30	305	31.5	-----	1.5	332	36.5	3.5
Columbus	319	40	33	300	29	-----	11	519	52	12
Alabama:										
Birmingham	354	46	34.5	415	35.5	-----	10.5	574	53.5	7.5
Selma	431	54	38	304	35.5	-----	18.5	525	53.5	1.5
Montgomery	448	54	38	318	35.5	-----	18.5	536	53.5	1.5
Georgia:										
Atlanta	521	54	39	493	38.5	-----	15.5	711	56.5	2.5
Macon	608	54	41	513	38.5	-----	15.5	732	56.5	2.5
Albany	609	56.5	41	456	41	-----	15.5	675	59.5	3
Waycross	727	60.5	43.5	565	45	-----	15.5	783	63.5	3
South Carolina:										
Anderson	656	71.5	42.5	658	56	-----	15.5	856	75	3.5
Orangeburg	830	67	45	748	51.5	-----	15.5	966	70	3
Darlington	880	71	47	831	55.5	-----	15.5	1,049	79.5	8.5
North Carolina:										
Asheville	654	79	42.5	755	63.5	-----	15.5	974	83.5	4.5
Greensboro	844	73	47	853	62	-----	11	1,072	81.5	8.5
Goldsboro	1,023	75.5	50	1,086	56.5	-----	19	1,277	75.5	-----
Missouri:										
Poplar Bluff	184	43	27.5	627	59.5	7.5	-----	532	50.5	7.5
West Plains	215	43	29.5	566	57.5	14.5	-----	569	57.5	14.5
Springfield	327	43	33.5	678	56.5	13.5	-----	629	50.5	7.5
St. Louis	372	43	35	718	47	4	-----	698	52	9
Kansas City	495	50.5	39.5	868	57.5	7	-----	745	50.5	-----
Moberly	520	50.5	39.5	866	57.5	7	-----	846	57.5	7

* From Lake Charles less than from Stuttgart.

To—	From Stuttgart, Ark.			From New Orleans, La.				From Lake Charles, La		
	Dis- tance	Pres- ent rate	Com- plain- ants' pro- posed scales	Dis- tance	Rate	Over Stutt- gart	Under Stutt- gart	Dis- tance	Rate	Over Stutt- gart
	<i>Miles</i>	<i>Cents</i>	<i>Cents</i>	<i>Miles</i>	<i>Cents</i>	<i>Cents</i>	<i>Cents</i>	<i>Miles</i>	<i>Cents</i>	<i>Cents</i>
Kansas:										
Coffeyville.....	368	62.5	35	714	74.5	12	-----	591	67	4.5
Pittsburg.....	422	50.5	36.5	739	57.5	7	-----	616	50.5	-----
Topeka.....	558	62.5	41.5	904	73	10.5	-----	781	65.5	3
Salina.....	646	71.5	43	962	81	9.5	-----	869	73	1.5
Dodge City.....	698	83	43	1,043	109.5	26.5	-----	920	102	19
Nebraska:										
Omaha.....	691	55	44.5	1,062	62.5	7.5	-----	939	55	-----
Fremont.....	759	59.5	44.5	1,098	67	7.5	-----	975	59.5	-----
Hastings.....	824	90	45.5	1,163	97	7	-----	1,040	90	-----
Grand Island.....	843	96	45.5	1,182	95	-----	1	1,059	96	-----
Kearney.....	863	102	47.5	1,202	101.5	-----	.5	1,079	102	-----
Oklahoma:										
Muskogee.....	323	52	33.5	627	67	15	-----	504	67	15
Ardmore.....	401	59.5	36.5	591	74.5	15	-----	468	67	7.5
Oklahoma City.....	417	59.5	36.5	726	74.5	15	-----	603	67	7.5
Enid.....	464	67	39.5	804	74.5	7.5	-----	681	67	-----
Elk City.....	528	67	39.5	859	83.5	16.5	-----	687	76	9

INVESTIGATION AND SUSPENSION DOCKET No. 2204
PEACHES FROM ALABAMA, GEORGIA, AND TENNESSEE
TO EASTERN POINTS

Submitted November 6, 1924. Decided December 1, 1924

Proposed cancellation of route, in connection with the Southern Railway, on peaches, in carloads, under joint commodity rates from points in Georgia and Alabama and from Chattanooga, Tenn., to trunk-line, New England, and Buffalo-Pittsburgh territories, and to Canada, which would result in increased rates over that route, found not justified. Suspended schedules ordered canceled and proceeding discontinued.

Henry Thurtell for Central of Georgia Railway and *Charles J. Rixey* for Southern Railway system, respondents.

J. O. Cromwell for protestant.

REPORT OF THE COMMISSION

DIVISION 3, COMMISSIONERS HALL, CAMPBELL, AND COX

BY DIVISION 3:

By schedules filed to become effective August 4, 1924, respondents proposed to cancel the route in connection with the Southern Railway under the joint commodity rates on peaches, in carloads, from points in Georgia and Alabama and from Chattanooga, Tenn., on the Central of Georgia, hereinafter termed the Central, the Georgia, Florida & Alabama, and the Wrightsville & Tennille, to destinations in trunk-line, New England, and Buffalo-Pittsburgh territories, and in Canada. Upon protest of the Georgia Peach Growers' Exchange, operation of the schedules was suspended until January 1, 1925. Rates will be stated in amounts per 100 pounds.

This territory of destination is referred to as the East, and the traffic under consideration as eastern traffic. The record is confined largely to peaches moving from Georgia producing points to destinations beyond Potomac Yard, Va., and, with respect to the suspended rates, deals generally with those from points on the Central. This traffic moves in refrigerator cars. The joint rates applicable do not include the cost of refrigeration. Under the present tariffs like joint commodity rates to the respective eastern destinations are available over three routes beyond the Central's rails to Potomac Yard, where eastern traffic is delivered to a connecting carrier, usually to the Pennsylvania. These routes are (1)

via Atlanta, Ga., and Southern; (2) via Atlanta, Seaboard Air Line to Richmond, Va., thence Richmond, Fredericksburg & Potomac; and (3) via Macon, Ga., Georgia Railroad to Augusta, Ga., Atlantic Coast Line to Richmond, thence Richmond, Fredericksburg & Potomac. If the suspended schedules were permitted to become effective the joint commodity rates would no longer be applicable over route 1, leaving in effect the lowest combination rates,¹ except from common points from which joint class rates would apply.

An exhibit introduced by the Southern covers the Central's 47 peach-shipping points, common² and local, and shows that the cancellation of route 1 would result in rate changes in every instance from those points to the principal consuming markets.³ From local points of origin the bulk of such changes varies from 0.25 to 1.75 cents.⁴ Reductions predominate, but in no case do they exceed 1.75 cents. In several instances the increases range from 3.75 to 5.25 cents. Under the joint class rates from the common points increases of from 23 to 56 cents would result.

The Central filed the cancellation of route 1 unwillingly. It did so only after the Southern revoked the concurrence authorizing the Central to publish these joint commodity rates. Its position is that on this highly perishable commodity the public interest lies in the direction of keeping open these three practical routes under the joint commodity rates, because of the possibility that one route may be temporarily blocked by washouts or wrecks, pointing out that these peaches move in large volume during a short season comprising approximately six weeks.

The Southern contends that if it is required to continue its participation in the joint commodity rates over route 1 it will be compelled to short haul itself in contravention of section 15, paragraph (4), of the interstate commerce act, on traffic from points common with the Central, and also on traffic from the producing territory south of Macon where the rails of the Georgia Southern & Florida, a Southern Railway system line, and of the Central closely parallel each other. The latter contention is based upon the assertion that cross-country competition exists, and that on traffic shipped from a Central station, which could just as conveniently be shipped from a

¹ Lowest combinations are based on Macon generally, and on Atlanta in a few instances.

² Macon, Griffin, Fort Valley, Columbus, Oglethorpe, and Americus, Ga. Of these, the first four points are reached by the Southern.

³ Baltimore, Md., Philadelphia, Pa., New York and Buffalo, N. Y., and Boston, Mass.

⁴ Fractions of 0.25 and 0.75 cent are produced by reducing to basis of 100 pounds the class O rates, stated in amounts per car of 20,000 pounds, applicable from the points of origin to Macon or Atlanta.

Georgia Southern & Florida station, the Southern is deprived of the long haul.

Witnesses for the Southern testified that under the joint commodity rates the Central's divisions greatly exceed the latter's local rates, and that the Southern's divisions are much less than its local rate. Exhibits introduced in support thereof show that to New York, for example, from all producing points on the Central the joint commodity rates range from \$1.14 to \$1.295. Under those rates the Central's divisions to Atlanta vary from 24.8 to 31.1 cents compared with its corresponding local rates of from 9.5 to 22 cents, whereas the Southern's divisions from Atlanta to Potomac Yard range from 62.5 to 74.2 cents compared with its local rate of \$1.10. Ton-mile and car-mile earnings under the Southern's divisions for its haul of 631 miles to Potomac Yard from Atlanta are characterized as extremely thin and unprofitable. Those under its local rates from Atlanta and Macon, applicable if the combinations are permitted to become effective, are higher and therefore more desirable.

Prior to 1914 all of this traffic moved over route 1. During the height of the season in that year and in 1915 the Central routed several train lots over route 2. In 1916, claiming that interchange relations with the Atlantic Coast Line required it, the Central routed one-third of the eastern traffic over route 3. This policy of distribution continued, except during the period of Federal control, when the entire eastern peach traffic was sent over route 1 by the railroad administration in recognition, it is asserted, of the more economical results obtained by concentration upon one route of this traffic requiring highly specialized and expedited service. In 1923 the Central routed a much larger number of cars, in train lots, over route 2. Just prior to the 1924 shipping season the Central announced that its eastern peach traffic would be evenly divided between routes 1, 2, and 3. Convinced that such a policy was unsound both as to economy of operation and most satisfactory service, the Southern thereupon requested the Central to distribute the traffic so that none would move over route 1; and subsequently revoked its concurrence in the joint commodity rates in order that it might not be called upon to handle occasional shipments thereunder by that route.

In 1924 Georgia produced the largest peach crop in its history. The Southern shows that 14,068 carloads were shipped to all destinations. Of this total the Southern handled 6,215 carloads, or 44.2 per cent; and 3,710 carloads, or 26.4 per cent of the total, originated at stations on the Southern. The record indicates that of the total eastern movement, 8,522 carloads, 32, 36, and 32 per cent, were handled by the Atlantic Coast Line, Seaboard Air Line, and Southern, respectively. One-third of the Central's 1924 eastern peach traffic

amounted to about 1,935 carloads, which, added to the 2,708 carloads handled by the Southern to the East during that season, would have been 4,643 carloads.

All parties agree that the peach shipments in 1924 from the Central's stations to the East, moved entirely over routes 2 and 3, were handled satisfactorily. The Southern insists that this, and the fact that the shippers apparently concur in the Central's policy of dividing the traffic because they leave the routing to the Central, demonstrates that route 1 is superfluous.

These and other reasons, particularly that the Central fails to bring this traffic into Atlanta in time for departure in the Southern's fast peach train at midnight in order to make possible the best connection at Potomac Yard for eastern markets, are advanced by the Southern in justification of the proposed cancellation of route 1 under the joint commodity rates. But the real reason is that the Southern does not receive the bulk of the Central's eastern peach traffic. The Southern's vice president in charge of traffic frankly stated that, because of the prominent part played by the Southern and its predecessors in the development of peach growing commercially since its inception over half a century ago, the Southern "felt fully warranted in its expectation that with the growth of the industry to its present important proportions concentration over its line of the resulting traffic would continue," and, further, that the Southern desires to withdraw from this business "unless the traffic is delivered to us in substantial volume; we are not prepared to concur in the division of this important traffic from this territory."

Protestant stated that it is essential to the peach industry to have available as many routes as possible for the movement of this extremely perishable commodity, because one or more routes may be closed in emergencies. Shippers do not specify routing for obvious reasons. Chief among these are the placing upon the carriers of the responsibility for maintaining train schedules; for protecting the lowest rate; for making the required terminal delivery; for estimating the number of refrigerator cars necessary, placing requisitions therefor with the owners of the equipment, and designating the lines over which the empties shall move; and for arranging the ice supply at icing stations along the several routes. Protestant points out that the Southern participates in joint commodity rates to the East on peaches originating in this territory on lines other than the Central, which rates are made with relation to the rates under consideration from the latter's stations, and urges that this relationship should be continued.

Respondents attempted no justification of the existing departures from the aggregate-of-intermediates provision of the fourth sec-

tion of the act. They exist in the rates not alone from the points of origin under consideration but also in those from local points on the Southern. It is explained that these departures were created by the application of the general increase of 1920, under which the local rates from the points of origin to the basing points were increased 25 per cent, whereas the joint rates were increased 33 $\frac{1}{3}$ per cent. Respondents stated that all of these departures will be removed before the next shipping season.

The Southern's reliance upon section 15, paragraph (4), of the act in justification of the proposed cancellation of route 1 is without merit. It would not be short hauled on traffic from 43 of the 47 producing points on the Central, and the proposed cancellation applies alike as to all of the stations reached by the Central. Furthermore, it is not proposed to cancel the application over route 1 of the higher joint class rates which would become applicable from the four points common to the Central and Southern; nor the joint commodity rates over route 1 on pears, grapes, and plums, in straight carloads or in mixed carloads with cantaloupes, from stations on the Central to points in trunk-line and New England territories, identical with those on peaches here under consideration; nor the joint commodity rates from the Central's stations via Atlanta and the Southern to Ohio River crossings and other destinations.

Because of a disagreement between them as to the proper distribution of this peach traffic these respondents propose to deprive shippers of a practicable route maintained for many years, unless the shippers assume the responsibility of routing over that route and pay increased rates in many instances. This proceeding differs from the ordinary divisions case only in that the Southern action is motivated by the desire to obtain greater revenues by an increased volume of traffic instead of by increased divisions. We have frequently found that such disputes between carriers afford no justification for increased rates.

We find that the proposed schedules have not been justified. An order will be entered requiring their cancellation and discontinuing the proceeding.

No. 15531

**J. M. HUBER, INCORPORATED, v. CENTRAL RAILROAD
COMPANY OF NEW JERSEY ET AL.**

Submitted July 24, 1924. Decided November 25, 1924

Rate on petroleum oil, in tank cars, from Bayonne, N. J., to Brooklyn, N. Y.,
found not unreasonable or otherwise unlawful. Complaint dismissed.

Richard Townsend for complainant.

H. B. Thomas, C. L. Ewing, George D. Yeomans, and Harold L. Warner for defendants.

REPORT OF THE COMMISSION**DIVISION 3, COMMISSIONERS HALL, CAMPBELL, AND COX****BY DIVISION 3:**

No exceptions were filed to the report proposed by the examiner.

Complainant, a corporation, manufactures newspaper printing inks and carbon black at Brooklyn, N. Y. By complaint filed December 19, 1923, it alleges that the rate on petroleum oil, in tank cars, from Bayonne, N. J., to complainant's plant in Brooklyn for the two years next preceding the filing of the complaint has been and is unreasonable, unjustly discriminatory, and unduly prejudicial. We are asked to prescribe a reasonable rate for the future and to award reparation. Rates will be stated in cents per 100 pounds.

The shipments move from Bayonne to Jersey City, N. J., over the Central Railroad of New Jersey, hereinafter referred to as the Jersey Central. They are floated from Jersey City to the Bush Terminal Company docks and handled thence to the rails of the South Brooklyn Railway in Brooklyn by the Bush Terminal Company. The South Brooklyn Railway operates over its own rails from Thirty-eighth Street to Ninth Avenue, Brooklyn. There it switches the cars over its track on Thirty-eighth Street and then moves them along Thirty-eighth Street until the Fourth Avenue subway in Brooklyn is reached. The South Brooklyn Railway moves the cars from that point over the tracks of the New York Rapid Transit Corporation through the Fourth Avenue subway, which is owned by the city of New York, to Sixty-fifth Street, and thence, leaving the subway, over the tracks of the same corporation to complainant's siding near Sixty-third Street and Sixth Avenue.

Complainant was notified by the South Brooklyn Railway Company that it would not transport petroleum oil in tank cars to complainant's plant after June 1, 1924. This was done because the New York Rapid Transit Corporation refused longer to permit shipments of petroleum oil in tank cars to be transported through the subway on account of the risk to passenger traffic. At the hearing complainant asked us to require the South Brooklyn Railway to transport petroleum oil in tank cars to its siding in Brooklyn after June 1, 1924. Upon this record, made in March, 1924, we have before us no violation of the interstate commerce act in that regard.

The distance from Bayonne to complainant's plant in Brooklyn is 13 miles, which does not include constructive mileage for the floatage service in New York Harbor. A commodity rate of 16 cents is applicable on petroleum oil in tank cars. That rate yields car-mile earnings of \$6.52 based upon a weight of 53,000 pounds. The rate from Bayonne to New York Harbor points, including the Bush Terminal Building in Brooklyn, is 12 cents. Complainant instanced rates on petroleum oil of 30 cents from Bayonne to Boston, Mass., a distance of 239 miles, 19.5 cents from Philadelphia to Brooklyn, 90 miles, and 30.5 cents from Philadelphia to Portland, Me., 427 miles. The rate on liquid asphalt from Bayonne to complainant's plant is 13 cents for 13 miles and from Manville, N. J., to complainant's plant 13 cents for 38 miles. Liquid asphalt is said to possess transportation characteristics similar to those of petroleum oil. The rates on ice, lumber, bottles, and sand and gravel from points in Pennsylvania and New Jersey to Brooklyn destinations were shown to be relatively lower for greater distances than the rates on petroleum oil.

The allegations of undue prejudice and unjust discrimination are not sustained.

A witness for defendants testified that rates from points within a radius of 100 miles west of Jersey City to points beyond the terminals of the trunk lines in Brooklyn, which are the Bush, Jay Street, New York Dock Company, and Brooklyn Eastern District Terminals, are higher than the flat New York rates applying to those terminals. An exhibit was introduced showing that class and commodity rates generally from Jersey Central points to destinations on the South Brooklyn Railway are higher than the rates to New York Harbor points. Asphalt is rated sixth class and petroleum oil fifth class in the official classification.

We find that the rate on petroleum oil in tank cars from Bayonne, N. J., to Brooklyn, N. Y., was not and is not unreasonable or otherwise unlawful. The complaint will be dismissed.

No. 15334

RUTENBERG ELECTRIC COMPANY v. CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY ET AL.

Submitted May 28, 1924. Decided November 25, 1924

Rates on electrical heating and cooking appliances, in carloads, in September and October, 1921, from Marion, Ind., to San Francisco, Calif., found not to have been unreasonable, unjustly discriminatory, or unduly prejudicial. Complaint dismissed.

J. A. Bond for complainant.

F. E. Andrews for defendants.

REPORT OF THE COMMISSION

DIVISION 3, COMMISSIONERS HALL, CAMPBELL, AND COX

BY DIVISION 3:

Exceptions to the examiner's proposed report were filed by complainant.

By complaint seasonably filed, complainant, a corporation manufacturing electrical appliances at Marion, Ind., alleges that unreasonable, unjustly discriminatory, and unduly prejudicial rates were charged for the transportation of two carloads of electrical heating and cooking appliances from Marion to San Francisco, Calif., in September and October, 1921. Reparation only is asked. Rates will be stated in amounts per 100 pounds. One shipment consisted of electric radiators, or heaters, on which freight charges were collected in the sum of \$940.80, based on a weight of 22,400 pounds and the third-class rate of \$4.20. The other shipment consisted of radiators or heaters, and hot plates, toasters, table stoves, ovens, kitchenettes, warming shelves, and ranges. The freight charges collected amounted to \$1,411.21, based upon a minimum weight of 32,400 pounds and the third-class rate of \$4.20, on the articles other than toasters and at a weight of 864 pounds and the first-class rate of \$5.835 on the toasters. There was no carload rating on toasters. This shipment was loaded in a 30-foot car. The rates charged were in accordance with the tariffs.

93 I. C. C.

Complainant points to the following commodity rates in effect at the time of the hearing on other articles said to be of like or competitive nature:

Articles	Minimum weight	Rate
Water heaters, gas, gasoline, or oil burning.....	<i>Pounds</i> 20, 000	\$2. 31
Sheet-iron or sheet-steel ware, plain, galvanized, tinned, enameled, painted, japanned, or lithographed (included in this mixture are toasters, metal, not electric).....	22, 000	1. 93
Electric appliances, classed A in western classification.....	30, 600	2. 03
Electric machines and machinery, classed A in western classification.....	30, 000	2. 35
Heaters, water, gas, gasoline, or oil; stoves (cooking or heating) coal or wood burning; stoves (cooking or heating) gas or oil burning; ranges, electric, and hot plates and parts for same.....	24, 000	1. 87
Electric heaters, hot plates, ranges, sadirons, table stoves, and toasters	24, 000	2. 75

The above commodity rates reflect the 10 per cent reduction of July 1, 1922. The third-class rate of \$4.20 with the 10 per cent reduction is now \$3.78.

Effective September 30, 1922, or about a year after the shipments moved, defendants published a commodity rate from Marion to San Francisco of \$2.75, applicable on electric heaters, hot plates, ranges, sadirons, table stoves, and toasters, minimum weight 24,000 pounds. Complainant contends that even this rate was too high and that reparation should be awarded to a still lower rate because of the difficulty complainant has in meeting the competition of Pacific coast manufacturers.

Complainant refers to *General Gas Light Co., v. A. G. S. R. R. Co.* 83 I. C. C. 361, wherein we reduced from fourth class, minimum weight 16,000 pounds, to fifth class, minimum weight 24,000 pounds, the rating in the three general classification territories on Radiant-fire gas heaters, said by complainant to be similar in certain respects to the electric heaters here considered. That case is now before us on rehearing.

Defendants say that the \$2.75 rate was established at the request of complainant and solely to assist complainant in competing with Pacific coast manufacturers. The distance from Marion to San Francisco is about 2,400 miles. On the basis of the minimum weight of 24,000 pounds the \$2.75 rate yields \$660 per car and defendants are opposed to according it retroactive effect, contending that the class rates are reasonable. An exhibit introduced by defendants shows that the earnings on some commodities are greater and on others less than on the traffic in question.

The invoice value of one car was about \$6,200 and of the other about \$9,200.

We find that the rates charged were not unreasonable, unjustly discriminatory, or unduly prejudicial. The complaint will be dismissed.

CAMPBELL, *Commissioner*, dissenting:

I fail to find any justification upon this record for charges of \$940.80 and \$1,411.21 per car for these movements. The shipments consisted of electrical heating and cooking appliances which were analogous to the electric heaters, hot plates, ranges, sadirons, table stoves, and toasters on which the rate was \$2.75. That rate prior to July 1, 1922, when these shipments moved, would have been \$3.05, as compared with the assailed rates of \$4.20 and \$5.835, and would have yielded 25.4 mills per ton-mile, 30.5 cents per car-mile, and \$732 per car, which I consider ample. Reparation should be awarded to that basis.

93 I. C. C.

No. 14889

CHEVROLET MOTOR COMPANY OF CALIFORNIA *v.*
DIRECTOR GENERAL, AS AGENT, ATCHISON, TOPEKA
& SANTA FE RAILWAY COMPANY, ET AL.

Submitted June 30, 1924. Decided November 25, 1924

Rates charged on shipments of imitation leather, in car lots, between November 24, 1917, and February 7, 1920, from Fairfield, Conn., and Newburgh, N. Y., to Oakland, (Melrose), Calif., found unreasonable. Reparation awarded.

Frank A. Gaynor and *C. R. Scharff* for complainant.

John F. Finerty and *Thomas M. Woodward* for Director General of Railroads, as agent.

REPORT OF THE COMMISSION

DIVISION 3, COMMISSIONERS HALL, LEWIS, AND COX

BY DIVISION 3:

Exceptions were filed by defendants to the supplemental report proposed by the examiner and the case was orally argued.

Complainant, a corporation, manufactures automobiles at Melrose, Oakland, Calif. By complaint filed May 8, 1923, it alleges that the less-than-carload rates charged on shipments of imitation leather, in car lots, between November 24, 1917, and February 7, 1920, from Fairfield, Conn., and Newburgh, N. Y., to Oakland (Melrose), were unjust, unreasonable, and unjustly discriminatory to the extent that they exceeded the rates contemporaneously in effect on leather, in carloads. The prayer is for reparation. Rates will be stated in amounts per 100 pounds. Informal complaint was filed February 28, 1921.

A proposed report was issued herein February 29, 1924, recommending dismissal of the complaint on the ground that "the record did not show that complainant paid the freight charges as such and ultimately bore them." This was done because complainant failed to file within 10 days after the hearing, October 22, 1923, as agreed, an affidavit of its resident comptroller at Oakland bearing upon this feature of the case. Up to the date of issuance of the proposed report no such statement had been received. Thereafter, on March 20, 1924, the affidavit was received and made part of the record with

the consent of the Director General of Railroads, as agent, hereinafter called defendant, it being understood that a supplemental proposed report would be issued upon the merits of the case.

All of the shipments were in car lots and all except one moved during Federal control over lines operated by the Director General of Railroads. The one excepted moved November 24, 1917, and thus prior to Federal control, from Newburgh to Oakland over the Erie, the Chicago, Rock Island & Pacific, the El Paso & Southwestern, and Southern Pacific. No appearance was entered for the corporate carriers. This shipment weighed 35,255 pounds and a commodity rate of \$2 was assessed. Contemporaneously a commodity rate of \$1.40, minimum weight 24,000 pounds, applied on leather, in carloads. The latter rate was increased March 15, 1918, to \$1.75, and on June 25, 1918, to \$2.19, which was the rate applicable on leather during the movement of the other shipments. The weights of the other shipments ranged from 16,986 to 39,421 pounds, the average weight was 27,480 pounds, and the applicable less-than-carload commodity rate assessed on all but two of them was \$3.125. On the two excepted shipments rates of \$3.215 and \$3.315 were collected. These two shipments were overcharged.

The alleged unjust discrimination in the rates in favor of leather was brought to the attention of the Director General of Railroads by the Chevrolet Motor Company on November 18, 1919, and subsequently, effective February 8, 1920, the commodity rate on leather, in carloads, was made applicable on imitation leather, in carloads, and has so remained since. The two articles are rated the same in the different classifications. Complainant contends that because imitation leather is less valuable than leather, the higher rate charged on imitation leather, in car lots, was unreasonable and unjustly discriminatory to the extent that it exceeded the rate contemporaneously applicable on leather, in carloads, and reparation is asked to that basis.

Imitation leather, as its name implies, is a substitute for leather. It is used extensively by complainant in the manufacture of back and seat cushions for its automobiles and moves in large quantities. It is thinner, much lighter in weight, and much less valuable per unit of surface, than leather. Complainant introduced for comparative purposes a statement showing carload commodity rates contemporaneously in effect between the same general territories on analogous articles, such as leather articles, oil cloth, oil clothing, and rubber clothing, with earnings per car and per car-mile on a much lower basis than earnings under the rates assessed on imitation leather.

Defendant urges that rates on leather do not afford a fair basis of comparison by reason of the water competition between the Atlantic and Pacific coasts through the Panama Canal, which, he claims, forced the rate of \$1.40 on leather to the Pacific coast. On March 15, 1918, when the so-called water-competitive rate on leather was increased to \$1.75 as a result of our decision in *Transcontinental Rates*, 46 I. C. C. 236, in order to remove fourth-section departures at intermediate points; the rate on imitation leather was increased from \$2 to \$2.50, thereby indicating that the same competitive conditions had existed as to that rate. Competitive conditions having been similar it is proper to compare the rates on leather and imitation leather from the standpoint of reasonableness. Defendant introduced a comparative statement of transcontinental rates approved by us on other commodities as tending to show that the earnings per car and per car-mile on such articles as iron and steel, tea waste, pig lead, newsprint paper, bar iron and steel, and soda ash were higher than those under the rates assailed. These comparisons are not helpful. *Salt Lake Potash Co. v. A. C. L. R. R. Co.*, 87 I. C. C. 695. No reason was offered from a transportation standpoint why the rate on imitation leather should have been higher than that on leather.

The allegation of unjust discrimination is not sustained.

We find that the rates complained of were unreasonable to the extent that they exceeded the contemporaneously applicable rate on leather, in carloads, minimum weight 24,000 pounds, subsequently established on imitation leather; that the shipments were made as described; that complainant paid and bore the charges thereon; that it was damaged in the amount of the difference between the charges paid and those which would have accrued at the rates herein found reasonable; and that it is entitled to reparation with interest. Complainant should comply with Rule V of the Rules of Practice, and include in its statement the overcharges found.

No. 14609

DELTA BEET SUGAR CORPORATION v. DIRECTOR GENERAL, AS AGENT

Submitted January 21, 1924. Decided November 25, 1924

Rate charged on petroleum coke, in carloads, from Casper, Wyo., to Delta, Utah, found inapplicable. Applicable rate found unreasonable. Reparation awarded.

H. W. Prickett and Milton H. Love for complainant.

John F. Finerty and Fred W. Heid for defendant.

REPORT OF THE COMMISSION

DIVISION 3, COMMISSIONERS HALL, CAMPBELL, AND COX

BY DIVISION 3:

Exceptions were filed by defendant to the report proposed by the examiner, to which complainant replied. Our conclusions differ somewhat from those recommended by the examiner.

Complainant, a corporation, was manufacturing beet sugar at Delta, Utah, during 1919. By complaint seasonably filed it alleges that the rate charged on nine carloads of petroleum coke shipped in July, 1919, from Casper, Wyo., to Delta was unreasonable. The prayer is for reparation. Rates will be stated in cents per 100 pounds.

Delta is on the main line of the Los Angeles & Salt Lake 134 miles southwest of Salt Lake City, Utah. The shipments, averaging 41,000 pounds, moved over the Chicago, Burlington & Quincy and Colorado & Southern to Cheyenne, Wyo., Union Pacific and Oregon Short Line to Salt Lake City, and Los Angeles & Salt Lake beyond, 876 miles. Charges were collected at a commodity rate of 52.5 cents, composed of 32 cents to Provo, Utah, and 20.5 cents beyond. Both factors had been increased under General Order No. 28 of the Director General of Railroads. The tariff carrying the Provo-Delta rate contained a provision that where charges on a through continuous movement of coke were based on a combination of separately established rates the increase authorized by General Order No. 28 should be applied to the combination in effect on

93 I. C. C.

June 24, 1918. Under that provision a rate of 49 cents was applicable on the shipments. They were accordingly overcharged. *Sligo Iron Store Co. v. W. M. Ry. Co.*, 62 I. C. C. 643; 73 I. C. C. 551.

When the shipments moved there was in effect on coke a commodity rate of 32 cents, carload minimum 30,000 pounds, from Casper to 22 competitive sugar-producing points in Idaho and Utah for distances approximately the same as that to Delta. The transportation conditions affecting the movements to Delta are not shown to be less favorable than those encountered between Casper and the points accorded the 32-cent rate, several of which are located on branch lines and are farther distant from Casper than Delta. Petroleum coke from Casper moved during 1919 and subsequent years to certain of the competing Utah and Idaho sugar factories. Effective February 28, 1920, a combination rate of 39.75 cents, composed of 32 cents to Salt Lake City and a proportional rate of 7.75 cents beyond, was established from Casper to Delta. Rates on sugar eastbound to and beyond Denver, Colo., were the same from Delta and from the competitive manufacturing points accorded the 32-cent rate on coke.

The following examples of other contemporaneous rates on coke in the same general territory are taken from complainant's exhibits:

From—	To—	Distance	Rate	Ton-mile revenue
		<i>Miles</i>	<i>Cents</i>	<i>Mills</i>
Casper, Wyo.....	Twin Falls, Idaho.....	890	32	7.19
Do.....	Sugar City, Idaho.....	853	32	7.50
Segundo, Colo.....	Twin Falls, Idaho.....	985	32	6.50
Do.....	Sugar City, Idaho.....	948	32	6.75
Do.....	Wabuska, Nev.....	1,300	39.5	6.08
Canon City, Colo.....	Los Angeles, Calif.....	1,291	39.5	6.12
Sunnyside, Utah.....	Oxnard, Calif.....	1,350	39.5	5.85

The applicable 49-cent rate yielded 11.2 mills per ton-mile. Rates on coal from Rock Springs, Wyo., through which point complainant's shipments moved, were the same to Twin Falls, Sugar City, and Delta.

Defendant contends that the rate charged, composed of a highly competitive rate to Provo and a commodity-rate factor beyond, was not excessive for the service performed; that the 32-cent rate to the basis of which reparation is sought was established at that unduly low level in order to stimulate development of the beet-sugar industry in intermountain territory; and that that rate is not a proper standard by which to measure the reasonableness of the rate assailed. Comparison is made with contemporaneous rates for comparable distances, yielding ton-mile earnings in excess of 11.2 mills, on

coke from New Mexico to Arizona points, on anthracite coal from Colorado to destinations in Idaho, and on salt from Salt Lake City to Idaho, Washington and Oregon points; and with rates on coke from Salt Lake City into Idaho, Nevada, and Oregon, ranging from 25 cents for 174 miles to 33.5 cents for 576 miles. Attention is directed to the rate of 68 cents on salt, in carloads, from Saltair, Utah, for 876 miles into Montana and Idaho, found reasonable in *Inland Crystal Salt Co. v. B., A. & P. Ry. Co.*, 78 I. C. C. 659. Rates on copper residue from Utah to destinations in Colorado of 40.5 to 44 cents for 459 to 738 miles also are shown. It is testified that gas coke and the other commodities named in defendant's comparisons load more heavily and return a higher revenue per car-mile than does petroleum coke.

Defendant points out that the shipments considered are the only ones which have moved from Casper to Delta, that no request was made for a rate to Delta prior to the movement, and that none is sought for the future. The failure to ask a rate for the future is explained by the fact that complainant no longer operates the Delta plant. Reference is made to the rates on coke found not unreasonable in *Anaconda Copper Mining Co. v. Director General*, 80 I. C. C. 481, and *Greene Cananea Copper Co. v. Director General*, 80 I. C. C. 121. In those cases complainants relied upon the contention that the rates assailed were illegal, or that they did not conform to the provisions of General Order No. 28, to establish their unreasonableness.

Complainant cites *Corporation Commission of Virginia v. C. & O. Ry. Co.*, 40 I. C. C. 24, wherein we said, at page 28:

It is true that in determining the reasonableness of rates, due consideration of their relation to other rates of the various carriers serving the same or competing localities should be given. In other words, section 1 of the act contemplates that rates to be just and reasonable must be relatively fair as between localities similarly situated, as well as reasonable *per se*.

In December, 1919, prior to the filing of the complaint, the factory and assets of complainant, including this claim, were purchased, and its liabilities were assumed by the Great Basin Sugar Company. The interest of the successor was not disclosed within the period for filing claims arising out of Federal control. Defendant insists that a motion made to join the Great Basin Sugar Company as a co-complainant comes too late, and that lack of interest precludes recovery by complainant.

In *Plymouth Coal Co. v. P. R. R. Co.*, 56 I. C. C. 699, we considered a case wherein the complainant had assigned certain claims *pendente lite*, and where, as here, neither the assignee nor any suc-

cessor in interest asserted any right adverse to complainant's claim. We there said, at page 707:

If we find that complainant has been the party injured by a violation of the act to regulate commerce it is to complainant that our award of reparation should be made under that act, and we may not deny it reparation because of an assignment *pendente lite* under which no adverse rights are asserted, even if we have jurisdiction under that act to pass upon such conflicts.

The fact that the assignment in the instant proceeding took place prior to the filing of the complaint does not, in our opinion, warrant a different conclusion. *Wagner & Steiner v. Director General*, 68 I. C. C. 138; *Rosenberg Bros. & Co. v. Director General*, 83 I. C. C. 557.

Our conclusion that the award of reparation may properly be made to complainant renders unnecessary any action upon the motion to join the Great Basin Sugar Company.

We find that the rate assailed was unreasonable to the extent that it exceeded 32 cents; that complainant made the shipments described and paid and bore the charges thereon; that it was damaged thereby in the amount of the difference between the charges paid and those which would have accrued at the rate herein found reasonable; and that it is entitled to reparation, with interest. Complainant should comply with Rule V of the Rules of Practice.

93 I. C. C.

No. 14675

DELTA BEET SUGAR CORPORATION v. DIRECTOR GENERAL, AS AGENT, AND COLORADO & WYOMING RAILWAY COMPANY

Submitted January 21, 1924. Decided November 29, 1924

Rate on coke, in carloads, from Segundo, Colo., to Delta, Utah, found unreasonable. Reparation awarded.

H. W. Prickett and *Milton H. Love* for complainant.

John F. Finerty and *Fred W. Heid* for Director General of Railroads, as agent.

REPORT OF THE COMMISSION

DIVISION 4, COMMISSIONERS MEYER, EASTMAN, AND POTTER

BY DIVISION 4:

This case was presented under the shortened procedure. Exceptions were filed by the director general to the report proposed by the examiner, and a reply thereto was filed by complainant. Our conclusions differ somewhat from those recommended by the examiner.

Complainant, a corporation, formerly operated a sugar factory at Delta, Utah. It alleges, by complaint seasonably filed, that the rates charged on 19 carloads of gas coke shipped between June 1, 1918, and July 25, 1919, from Segundo, Colo., to Delta were unjust, unreasonable, and unduly prejudicial. The prayer is for reparation. Rates will be stated in cents per 100 pounds, unless otherwise indicated.

Delta is on the main line of the Los Angeles & Salt Lake, 134 miles southwest of Salt Lake City, Utah, and Segundo is on the Colorado & Wyoming, 13 miles west of Trinidad, Colo. The shipments moved over two routes: (1) Colorado & Wyoming, Denver & Rio Grande, and Los Angeles & Salt Lake; and (2) Colorado & Wyoming, Colorado & Southern, Union Pacific, Oregon Short Line, and Los Angeles & Salt Lake. Charges thereon have been adjusted on the basis of the applicable rates; 36 cents, composed of 28.25 cents to Salt Lake City, and a proportional rate of 7.75 cents beyond, prior to June 25, 1918, and thereafter 39.75 cents, composed of 32 cents to Salt Lake City and 7.75 cents beyond. The aggre-

gate weight of the shipments made prior to June 25, 1918, was 272,660 pounds; those made thereafter weighed 718,880 pounds.

The following comparisons of the rates charged with other rates on coke in the same general territory are taken from complainant's exhibits:

From—	To—	Dis- tance	Prior to June 25, 1918			On and after June 25, 1918		
			Rate	Reve- nue per car- mile ¹	Reve- nue per ton- mile	Rate	Reve- nue per car- mile ¹	Reve- nue per ton mile
		Miles	Cents	Cents	Mills	Cents	Cents	Mills
Segundo, Colo.....	Delta, Utah.....	2 787	³ 36	23. 87	9. 15	⁴ 39. 75	26. 35	10. 10
Do.....	do.....	4 970	³ 36	19. 36	7. 42	⁴ 39. 75	21. 39	8. 2
Do.....	do.....	2 787	⁵ 28. 25	18. 73	7. 18	⁴ 32	21. 22	8. 13
Do.....	do.....	4 970	⁵ 28. 25	15. 2	5. 82	⁴ 32	17. 22	6. 6
Do.....	Twin Falls, Idaho.....	985	28. 25	14. 97	5. 74	32	16. 95	6. 5
Do.....	Sugar City, Idaho.....	948	28. 25	15. 55	5. 96	32	17. 66	6. 75
Do.....	Rigby, Idaho.....	932	28. 25	15. 82	6. 06	32	17. 92	6. 87
Do.....	Payson, Utah.....	899	28. 25	16. 41	6. 28	32	18. 58	7. 12
Do.....	Lewiston, Utah.....	852	28. 25	17. 3	6. 63	32	19. 6	7. 51
Do.....	Wabuska, Nev.....	1, 300	35. 75	14. 35	5. 5	39. 5	15. 86	6. 08
Casper, Wyo.....	Twin Falls, Idaho.....	890	28. 25	16. 56	6. 35	32	18. 76	7. 19
Canon City, Colo...	Los Angeles, Calif.....	1, 291	35. 75	14. 45	5. 54	39. 5	15. 97	6. 12
Sunnyside, Utah...	Oxnard, Calif.....	1, 350	35. 75	13. 82	5. 3	39. 5	15. 27	5. 85

¹ Based on average weight per car of 52,186 pounds.

² Route 1.

³ Rates charged.

⁴ Route 2.

⁵ Rates sought.

Complainant emphasizes the fact that its plant was the only one of about 25 sugar factories in Utah and Idaho, notwithstanding some of them are located on branch lines and are farther distant from Segundo than Delta, which did not enjoy the rates contended for. Rates on sugar eastbound were the same to and beyond Denver, Colo., from Delta and the competing producing points.

Rates on run-of-mine and slack coal, used extensively by beet-sugar factories, were the same to Twin Falls and Delta from Rock Springs, Wyo.; whereas on coke from Segundo moving through Rock Springs the rate to Delta was 7.75 cents higher than that to Twin Falls. On June 25, 1918, the rates per net ton on slack coal from Castle Gate, Utah, were \$1.90 to Lewiston and \$2.20 to Delta, a difference of 1.5 cents per 100 pounds; whereas on coke from Segundo, for a much longer haul through Castle Gate, the rate to Delta was 7.75 cents per 100 pounds higher than that to Lewiston.

It is urged for the director general that these were isolated shipments; that normally Delta's fuel supply is obtained from Utah; and that investigation discloses there was no movement of coke from Segundo to the competing factories. Complainant made the shipments from Segundo for the reason that Colorado coke was a more satisfactory fuel for its purposes than Utah coke.

The director general refers to the heavy grades and difficult operating conditions on the Denver & Rio Grande. He contends that the distance over route 2, rather than that over route 1, should be used in testing the reasonableness of the rates assailed. But no substantial difference is shown between the transportation conditions, encountered from Segundo, to Delta and to the other sugar-producing points to which the blanket rates applied.

Comparison is made of the factor to Salt Lake City with the rates found not unreasonable in *Anaconda Copper Mining Co. v. Director General*, 80 I. C. C. 481, and in *Greene Cananea Copper Co. v. Director General*, 80 I. C. C. 121. In those cases the complainants relied upon the contention that the rates assailed either did not conform to the provisions of General Order No. 28 of the director general, or that they were illegal, to establish their unreasonableness. The factor applied beyond Salt Lake City is compared with rates on coal of 11 cents from Castle Gate to Delta, 164 miles, and 7.6 to 8.95 cents for 72 to 150 miles from Pennsylvania mines to points in Ohio.

Reference is made also to the rate of 68 cents on salt, in carloads, from Saltair, Utah, for 876 to 900 miles to points in Montana, Idaho, and Washington, approved in *Inland Crystal Salt Co. v. B., A. & P. Ry. Co.*, 78 I. C. C. 659. The director general compares the values of coke and common salt, \$7.50 and \$3.80 per net ton, respectively. Complainant points out, however, that all commercial grades of salt are produced at Saltair, some of which are valued up to \$18 per ton, and contends that \$12 is a fair average value per ton of all salt shipped from that point.

In December, 1919, prior to the filing of the complaint, the factory and assets of complainant, including this claim, were purchased, and its liabilities were assumed, by the Great Basin Sugar Company. The interest of the successor corporation was not disclosed within the period provided for the filing of claims arising out of Federal control. The director general insists that a motion made to join the Great Basin Sugar Company as a party complainant comes too late, and that lack of interest precludes recovery by complainant. Attention also is directed to the fact that no request is made for future rates. The Delta plant has been resold to the Utah-Idaho Sugar Company, and neither complainant nor the Great Basin Sugar Company is interested in rates for the future.

In *Plymouth Coal Co. v. P. R. R. Co.*, 56 I. C. C. 699, we considered a case where the complainant had assigned certain claims *pendente lite*, and where, as here, neither the assignee nor any

successor in interest asserted any right adverse to complainant's claim. We there said, at page 707:

If we find that complainant has been the party injured by a violation of the act to regulate commerce it is to complainant that our award of reparation should be made under that act, and we may not deny it reparation because of an assignment *pendente lite* under which no adverse rights are asserted, even if we have jurisdiction under that act to pass upon such conflicts.

The fact that the assignment in the instant proceeding took place prior to the filing of the complaint does not, in our opinion, warrant a different conclusion. *Wagner & Steiner v. Director General*, 68 I. C. C. 138; *Rosenberg Bros. & Co. v. Director General*, 83 I. C. C. 557.

The contention that a rate found reasonable as of June 25, 1918, must be considered reasonable prior thereto is without merit.

We find that the rates assailed were unreasonable to the extent that they exceeded 28.25 cents prior to June 25, 1918, and 32 cents on and after that date; that complainant made the shipments as described and paid and bore the charges thereon; that it was damaged in the amount of the difference between the charges paid and those that would have accrued at the rates herein found reasonable; and that it is entitled to reparation in the sum of \$768.44, with interest.

An appropriate order will be entered.

93 I. C. C.

No. 15203

FLETCHER-WILSON COFFEE COMPANY v. LOUISVILLE
& NASHVILLE RAILROAD COMPANY

Submitted May 7, 1924. Decided November 25, 1924

Rate on green coffee, in carloads, from New Orleans, La., to Montgomery, Ala., found not unreasonable. Complaint dismissed.

M. M. Caskie for complainant.

E. D. Mohr for defendant.

REPORT OF THE COMMISSION

DIVISION 3, COMMISSIONERS HALL, CAMPBELL, AND COX

BY DIVISION 3:

Exceptions were filed by defendant to the report proposed by the examiner. We have reached conclusions differing from those recommended by him.

Complainant is a corporation dealing in coffee at Montgomery, Ala., and elsewhere. By complaint filed August 27, 1923, as amended, it alleges that the rate of 48.5 cents on green coffee, in carloads, from New Orleans, La., to Montgomery, is unjust and unreasonable. We are asked to award reparation on shipments moving subsequent to May 15, 1923, and to prescribe a reasonable rate for the future. Rates are stated in cents per 100 pounds.

Montgomery is 318 miles from New Orleans on defendant's main line through Birmingham, Ala., and Nashville, Tenn., to the Ohio River and St. Louis, Mo. The rate on green coffee from New Orleans to Nashville, Louisville, Ky., and St. Louis is only 0.5 cent higher than the rate to Montgomery. Complainant feels that it is entitled to an adjustment which reflects more closely its geographical location with respect to the primary market of New Orleans and asks for a 39.5-cent rate.

A history of the former equalization of the rates on green coffee to Chicago from New York and New Orleans, and its influence upon rates from New Orleans to the Ohio River and points in Mississippi Valley territory is contained in *Coffee from Galveston and other Gulf Ports*, 58 I. C. C. 716, and *MacGowan Coffee Co. v. I. C. R. R. Co.*, 66 I. C. C. 389. The principal bearing of this situation upon the present case is to bring out the fact, developed further upon the

record herein, that the rates on green coffee from New Orleans to Ohio River crossings are depressed because of competition existing at those points on coffee imported through the eastern ports. But while this may explain the level of rates from New Orleans to those crossings, it does not necessarily follow that rates substantially the same in amount to intermediate points are also depressed regardless of their distances from points of origin. The question which we must decide is whether the rate of 48.5 cents charged to Montgomery is inherently reasonable. The following comparison is made by complainant of rates on green coffee from New Orleans to Ohio and Mississippi River crossings, inland Mississippi Valley points, and Chicago, with rates charged to Montgomery, together with the respective distances:

From New Orleans to—	Distance	Rate	From New Orleans to—	Distance	Rate
	Miles	Cents		Miles	Cents
Jackson, Miss.	184	36	Nashville, Tenn.	562	49
Meridian, Miss.	202	36	St. Louis, Mo.	698	49
Natchez, Miss.	214	36	Louisville, Ky.	749	49
Vicksburg, Miss.	235	36	Chicago, Ill.	930	54
Greenwood, Miss.	282	39.5			
Greenville, Miss.	317	39.5	Montgomery, Ala.	318	48.5
Memphis, Tenn.	394	42.5			

Complainant refers to the fact that in consequence of our report in *Rates, to, from, and between Points South of the Ohio River*, 64 I. C. C. 306, in which we denied fourth-section relief at intermediate points in Mississippi Valley territory, rates between points in this territory are now on a so-called dry-land basis. It calls our attention to the rate of 39.5 cents to Greenville, Miss., for a distance of 317 miles and contends that the rate to Montgomery for 318 miles should be the same. Complainant also instances rates on green coffee from New Orleans to points west of the Mississippi River upon a lower level than the rate charged to Montgomery, for instance, to Little Rock, Ark., 471 miles, 49.5 cents; to El Dorado, Ark., 340 miles, 42.5 cents; to Beaumont, Tex., 298 miles, 38 cents; and to Shreveport, La., 306 miles, 25 and 34 cents for minimum carload weights of 66,000 and 24,000 pounds, respectively. Complainant also refers to rates from New Orleans to Montgomery on sugar and molasses, 33 cents; rice, 35.5 cents; flour, 25 cents; and salt, 24.5 cents, in support of its contention that a rate of 48.5 cents on green coffee is too high.

Defendant urges that we have found in other cases that rates in the Mississippi Valley were prescribed with the primary object of complying with fourth-section requirements, in disregard of the level of rates in other territories, and not as reasonable maximum rates. *Jackson Paper Co. v. A. & V. Ry. Co.*, 87 I. C. C. 529; *St.*

Louis Merchants Exchange v. A. & R. R. R. Co., 87 I. C. C. 547. It insists that a fairer comparison would be with rates on the same commodity to other points in southeastern territory, in which Montgomery is located. In support of its contention, it offers comparisons of the rate on green coffee to Montgomery with those from New Orleans to other southeastern points as follows:

From New Orleans to—	Distance	Rate	From New Orleans to—	Distance	Rate
	<i>Miles</i>	<i>Cents</i>		<i>Miles</i>	<i>Cents</i>
Montgomery, Ala.-----	318	48. 5	Augusta, Ga.-----	638	58
Selma, Ala.-----	306	48. 5	Knoxville, Tenn.-----	608	63. 5
Birmingham, Ala.-----	355	48. 5	Morristown, Tenn.-----	650	77. 5
Atlanta, Ga.-----	493	58	Jellico, Tenn.-----	673	76. 5
Chattanooga, Tenn.-----	498	58	Greenville, S. C.-----	652	69

Defendant insists that if the rate to Montgomery be reduced it will result in the condemnation of every important rate on coffee in the Southeast, whereas the rate to Montgomery is the only rate attacked in this proceeding. Although Montgomery is a distributing point as to coffee, other points in the territory are of equal or greater importance in that respect. The rates on green coffee to Selma and Birmingham, Ala., for distances of 306 and 355 miles, respectively, are the same as the rate to Montgomery. These three points take the same rates from New Orleans on most imported commodities, including sugar, molasses, rice, salt, and canned goods. It is not apparent upon this record why the New Orleans-Montgomery rate on green coffee should become the determinant of rates for this territory.

The comparisons of rates instanced by complainant from New Orleans to points west of the Mississippi River must be considered in the light of the rates to the points beyond, and are not convincing. In the recently decided case of *National Coffee Co. v. G., C. & S. F. Ry. Co.*, 92 I. C. C. 14, we found that reasonable rates on green coffee subsequent to August 26, 1920, to Denison, Fort Worth, Dallas, and Waco, Tex., from Galveston and Houston, Tex., for an average distance of 274.5 miles, and from New Orleans for an average distance of 537 miles, would have been 59.5 and 66 cents, respectively, equivalent to 53.5 and 59.4 cents at the present time.

The rate attacked yielded ton-mile earnings of 30.5 mills for 318 miles. The 36-cent rate from New Orleans to Jackson, Miss., referred to by complainant, yields 39.1 mills for 184 miles. The rates to the four Mississippi points shown by complainant, to which a 36-cent rate applies, yield ton-mile earnings of 34.4 mills for an average distance of 209 miles. Considering these rates in connection with the recognized principle that ton-mile earnings decrease as dis-

tance increases, and in further connection with the rates to points in southeastern territory for longer distances, instanced by defendant, the rate under attack to Montgomery does not appear to be out of line.

We find that the rate assailed was not and is not unreasonable. This finding is without prejudice to any conclusions which we may reach upon a more comprehensive record involving the realignment of commodity rates in the Southeast.

The complaint will be dismissed.

CAMPBELL, *Commissioner*, dissenting:

Comparisons with rates on green coffee west of the Mississippi River and on other commodities from New Orleans to Montgomery convince me that the assailed rate is too high. In *Montgomery Chamber of Commerce v. Director General*, 57 I. C. C. 610, we found a rate of 32 cents reasonable on sugar from New Orleans to Montgomery. It seems to me that the differences in transportation characteristics of green coffee and sugar do not warrant a rate difference greater than 7.5 cents, and I believe that the assailed rate should not exceed 39.5 cents, which is the present rate from New Orleans to Greenville, Miss., for about the same distance.

93 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 2178

PAPER BOXES BETWEEN SOUTHEASTERN POINTS

Submitted October 10, 1924. Decided December 3, 1924

Proposed rates on paper boxes, in carloads, between points in the Southeast, found justified, except as indicated. Suspended schedules ordered canceled without prejudice to the filing of schedules in conformity with the findings herein.

R. B. Gwathmey and *H. L. Walker* for respondents.

T. M. Henderson, John S. Fletcher, H. T. Moore, and E. L. Hart for protestants.

REPORT OF THE COMMISSION

DIVISION 3, COMMISSIONERS HALL, CAMPBELL, AND COX

BY DIVISION 3:

By schedules filed to become effective July 15, 1924, respondents proposed to revise their rates on fiberboard, pulpboard, and strawboard boxes, in carloads, knocked down, from Nashville and Chattanooga, Tenn., Atlanta, Ga., and Birmingham, Ala., to southeastern and south Atlantic coast points. Upon protests of manufacturers at Nashville, Chattanooga, and Atlanta the operation of the schedules from those points was suspended until December 12, 1924. Rates from these points and rates from Birmingham are related. No protest was filed by manufacturers at Birmingham against the revision but the proposed rates from that point were also suspended for the same period in view of the relationship. Respondents have since voluntarily deferred operation of the schedules until January 12, 1925. Rates will be stated in cents per 100 pounds.

Paper boxes are manufactured at all the points named, and competition in distributing them throughout the Southeast is keen. They are also manufactured at Cincinnati, Ohio, Louisville, Ky., New Orleans, La., and at eastern points, which also compete. Paper boxes, in carloads, are rated fifth class in southern classification, and move on this basis between all points in the South, except that commodity rates are published to the south Atlantic ports and from Nashville to Chattanooga and Knoxville, Tenn., Atlanta, Macon, and Augusta, Ga., and Birmingham and Montgomery, Ala.

Complaint against the maintenance of commodity rates from Nashville to interior southern points, while class rates apply from Chattanooga, Atlanta, and Birmingham, was given as the reason for the proposed revision. The present rates from Nashville are not satisfactory to the shippers there, and are now before us in the complaint in *American Tri-State Paper Box Co. v. L. & N. R. R. Co.*, Docket No. 15055, hereinafter referred to as the *Tri-State case*, in which it is alleged that these rates are unreasonable to the extent that they exceed 30 per cent of the first-class rates proposed by the carriers in the *Southern Class Rate Investigation*, Docket No. 13494. Complainants in the *Tri-State case* ask for rates of 31 cents to Birmingham, 35 cents to Montgomery and Atlanta, 39 cents to Macon, and 43 cents to Augusta and Savannah, and to Jacksonville, Fla.

The present and proposed rates and the contemporaneous fifth-class rates are shown in Appendix A hereto. The figures are compiled from exhibits of record.

Revised rates are proposed to practically all important points in southeastern territory. Prior to and at the time of the hearing in the *Tri-State case* the defendants therein offered to establish rates somewhat below the present level, but the adjustment offered was not satisfactory to the manufacturers. In order to satisfy their insistent demands for an immediate adjustment on a more consistent and relative basis, and at the same time to correct existing fourth-section departures, respondents published the proposed revision here under suspension. The suspended rates, except to Jacksonville and Savannah, are on a lower scale than those proposed by the defendants in the *Tri-State case* but not as low as those asked for by the complainants in that case. The proposed revision is intended only as a temporary measure to take care of the situation until such time as all rates on paper and paper articles between points in the Southeast may be revised on a more comprehensive scale.

Commodity rates on paper boxes in the South were first established from Atlanta to Savannah and Jacksonville in order to enable Atlanta manufacturers to compete with those in the East. The rates were made 25 cents to both points, the same as the all-water rate then in effect from New York and Baltimore to those ports. This basis, as modified by the general increases and reductions of recent years, is still maintained. Commodity rates to the ports were later established from Chattanooga, and still later from Nashville and Birmingham. These were made with relation to the rates from Atlanta and therefore the Atlanta-Savannah rate may be considered as the key rate. The rate from Chattanooga, established in 1919, was made 6 cents higher than the 31.5-cent rate then in effect

to Atlanta, or 37.5 cents. The exact basis of the rates from Nashville and Birmingham is not disclosed. The present rates are 35.5 cents from Atlanta, 42.5 cents from Chattanooga and Birmingham, and 51.5 cents from Nashville. The present all-water rates from New York and Baltimore are 41.5 cents to Savannah and 45 cents to Jacksonville. Respondents consider that the present rates from Atlanta to the ports are too low, and, as indicated in Appendix A, propose to increase the Savannah rate to 42 cents, and the Jacksonville rate to 46 cents. The latter rates would be but 0.5 cent and 1 cent higher, respectively, than the present all-water rates from New York and Baltimore to those ports. The water rates do not include marine insurance. The proposed rates from Chattanooga, Nashville, and Birmingham are higher than those from Atlanta, but do not appear to be made on any fixed basis.

Following a general revision in class rates in Georgia in 1923 the class rates from Chattanooga to destinations in Georgia were increased so that they would not be less than those applicable from intermediate Georgia points. As a result the class rates applicable on paper boxes from Chattanooga became higher than the commodity rates in effect from Nashville to the same Georgia destinations. Movement from Nashville over the Nashville, Chattanooga & St. Louis to these points is through Chattanooga, creating fourth-section departures which the proposed adjustment would remove. For example, the present rate from Nashville to Macon is 51 cents, and to Augusta 55.5 cents. The rates from Chattanooga to those points are 52 and 61 cents respectively. Under the proposed revision the rate from Nashville to Macon is reduced to 47 cents, and that from Nashville to Augusta to 51 cents, while the rates proposed to those points from Chattanooga are, respectively, 42 and 46 cents.

Respondents point out that the proposed rates from Nashville carry reductions ranging from 0.5 cent at Atlanta to 29.5 cents at points in southern Georgia such as Fitzgerald and Tifton, whereas increases occur only in the rates to Chattanooga and Knoxville, Tenn., and to south Atlantic ports, where the rates have been depressed. The rates proposed from Chattanooga result in reductions ranging from 1 cent at Knoxville to 26.5 cents at Fitzgerald and Tifton. Only the rates to the ports are increased, and these, 6.5 to 9.5 cents. Respondents show that the proposed rates from Chattanooga average 76.4 per cent of the contemporaneous fifth-class rates and 95.5 per cent of sixth class. The relationship of the proposed rates to the class rates from Nashville is even lower in percentage than from Chattanooga, but this is partly due to the fact that no general revision was made in the class rates from Chatta-

nooga as was made in the Nashville rates in 1916 under the decision in *Fourth Section Violations in the Southeast*, 30 I. C. C. 153. A realignment of the class rates is expected following the *Southern Class Rate Investigation*, *supra*. As to the proposed rate of 36 cents from Chattanooga to Anniston, Ala., which exceeds the fifth-class rate of 35.5 cents respondents state that it was published in error and will be corrected. A rate of 35 cents would conform to the readjustment here proposed.

Prior to 1922 the fifth-class rate of 64.5 cents applied on paper boxes from Birmingham to the south Atlantic ports. In the early part of that year a commodity rate of 47 cents, the same as then in effect from Chattanooga, was established from that point. It is now 42.5 cents. Respondents propose to establish a rate of 51 cents to Savannah, Brunswick, and Jacksonville, and of 52 cents to Charleston. These rates are substantially less than the fifth-class rate in effect prior to 1922.

Protestants at Nashville and Chattanooga take the position that the proposed rates are too high, unjustly discriminatory, and unduly prejudicial. It is their view that the rates should be on the same level as those in effect from the Ohio and Mississippi River crossings, and from Nashville, Chattanooga, and Birmingham to points in the Mississippi Valley territory; from points in the Southeast to Nashville and the Ohio River; and between Nashville and the Ohio River crossings, which are approximately 30 per cent of the contemporaneous first-class rates. They insist that there are no transportation or other conditions which justify higher rates in the Southeast than in the Mississippi Valley. The main objection of the Atlanta interests is that the resulting adjustment between different manufacturing points unduly prejudices Atlanta. They contend that the proposed rates should show a better relationship between the origin points and should bear some relation to the distance scales proposed by the presiding commissioner for adoption in his proposed report in the *Southern Class Rate Investigation*, *supra*.

To illustrate:

The present rate from Nashville to Chattanooga, 151 miles, is 30 cents, which respondents propose to increase to 36 cents. From Nashville to Hickman, Ky., and points in western Tennessee such as Jackson, 149 to 171 miles distant, a rate of 24.5 cents is maintained. The Nashville, Chattanooga & St. Louis performs both hauls, and the transportation conditions are not dissimilar. Protestants suggest a rate of 24.5 cents to Chattanooga.

The present rate from Nashville to Birmingham, 205 miles, is 42.5 cents. It is proposed to make this rate 37 cents, a reduction of 5.5

cents. Protestants point out that the rate in the reverse direction is 31 cents, and that there are no transportation conditions which justify a higher rate in one direction than in the other. It is shown that respondents maintain a rate of 33 cents from Atlanta to Nashville, 288 miles; 30 cents from Chattanooga to Union City, Tenn., 305 miles; and 29.5 cents from Nashville to Memphis, Tenn., 230 miles. Protestants suggest 29.5 cents as a reasonable rate to apply from Nashville to Birmingham.

The present rate from Nashville to Atlanta is 42.5 cents, and respondents propose to reduce this rate to 42 cents. Protestants suggest a rate of 33 cents, the same as that in effect in the reverse direction. In the *Tri-State case* complainants asked for 31 cents from Nashville to Birmingham, and 35 cents from Nashville to Atlanta.

The 45-cent rate from Nashville to Montgomery, Ala., 302 miles, respondents propose to reduce to 42 cents, the same as that proposed from Chattanooga to Montgomery. A rate of 35 cents for this movement was asked for in the *Tri-State case*, but a rate of 33 cents, the same as that from Nashville to Atlanta, is now suggested.

Respondents propose to increase to 58 cents the present 51.5-cent rate from Nashville to Savannah and Jacksonville, an increase of 6.5 cents. Protestants suggest a 43-cent rate from and to these points, the same as that from Nashville to Baton Rouge and New Orleans, La., for hauls somewhat greater. This rate was also asked for in the *Tri-State case*.

The rates to points in the Mississippi Valley were prescribed by us in *Rates to, from, and between Points South of Ohio River*, 64 I. C. C. 306, hereinafter called the *Mississippi Valley case*. We have frequently said that these rates were not prescribed as standards of reasonable maximum rates, but primarily to bring about an adjustment in harmony with the requirements of the fourth section of the act and at the same time conserve the revenues of the carriers. We have also said that Mississippi Valley rates may not be used as a measure of the rates between points in the Southeast.

The rates from Chattanooga and Atlanta to Nashville and the Ohio River crossings were established in order to permit manufacturers at those points to meet competition from central territory at the Ohio River and beyond. It was the custom to make Nashville rates a fixed differential under the rates to the Ohio River crossings, which accounts for the comparatively low rate to that point at the present time. There has been no movement of paper boxes to Nashville in recent years, doubtless because they are manufactured there, and the carriers are willing to revise these rates. A rate of 30 cents was established from Chattanooga to the river crossings on April 20, 1922, subject to minima of 36,000 pounds on corrugated boxes and 50,000 pounds on other boxes, to meet the rates from Monroe, Mich.,

and Milwaukee, Wis., to the river points. On July 1, 1922, it was reduced to 27 cents. It was understood that this rate was subnormal, and would not be used as a means of forcing down the rates in the Southeast where the same degree of competition did not exist. A rate of 34 cents was later established from Chattanooga to the river points subject to the lower southern classification minima.

There is not the same competition at Chattanooga as at Nashville. Paper boxes are manufactured at Louisville, Ky., on which the rate to Nashville is 27 cents, as prescribed in the *Mississippi Valley case*. To compete at Nashville the Chattanooga manufacturer must have a similar rate. Nashville is 187 miles from Louisville and 151 miles from Chattanooga. To reach Chattanooga competing manufacturers must pay rates of 56.5 cents from Louisville and Cincinnati and 42 cents from Atlanta. The distance from Louisville is 314 miles, from Cincinnati 338 miles, and from Atlanta 137 miles. Protestants compare the rates from Nashville to Virginia cities, but these rates reflect competition from Louisville, Cincinnati, and other points. Low competitive rates to the Virginia points having been published first from Chattanooga and later from Nashville.

As justification for the proposed rates to the ports respondents compare the rates in effect from the Ohio and Mississippi River crossings, the Gulf ports, Richmond, Va., and Baltimore, Md., to various points in the Southeast which are much higher for comparable distances. These rates are the fifth-class rates, but it seems that there is a movement of paper boxes from those points.

To show that they are less than reasonable maximum rates, respondents point out that the revenues per car on corrugated paper boxes under the proposed rates are much below those under the rates in effect west of the Mississippi River. But rates for distances under 350 miles are generally lower in the Southwest; and the minimum weights in that territory are 30,000 and 40,000 pounds, as compared with 24,000 pounds in the Southeast, thus accounting for the higher revenues for those distances. Respondents also show that the revenues per car on this type of box, under the rates proposed, are in some instances less than on such commodities as coal and cement from Bon Air and Nashville, Tenn., to Augusta, Macon, and other southeastern points.

Although the proposed rates show more regard for distance than do the present rates, many relationships would be maintained. For example, a rate of 26 cents is proposed from Atlanta to Rome, Ga., 73 miles, while the proposed rate from Chattanooga to Rome, 78 miles, is 28 cents. The present rates are 33 cents. The rate from Atlanta to Rome is based on the distance to Lindale which is in the Rome switching district but the distance is about 5 miles less than to Rome. The proposed rate from Atlanta to Chattanooga is the same

as that in the reverse direction, and is the same as the rate proposed from Nashville to Chattanooga. The distance from Atlanta to Birmingham is 39 miles less than from Nashville to Birmingham, yet the rate is the same from both points, 37 cents. The Louisville & Nashville makes the rate from Nashville, and the Southern from Atlanta. The proposed rate from Nashville to Atlanta for 288 miles is 42 cents. The same rate is proposed from Atlanta to Savannah for a joint-line haul of 281 miles.

There is some competition in the South between corrugated paper boxes and wire-bound wooden boxes. Lumber rates, less than 50 per cent of the proposed rates, apply from Nashville, for instance, to southeastern points on wire-bound wooden boxes, knocked down. To Chattanooga the rate is 16 cents, to Atlanta and Montgomery 20 cents, to Birmingham 14 cents, to Macon 22.5 cents, and Savannah and Jacksonville 27 cents. Protestants do not contend that there is or should be any relationship between the rates on paper boxes and those on wooden boxes, nor do they ask that any relationship be established. But they say that if the relationship in the classification ratings is proper, wooden boxes being rated sixth class in southern classification, either the proposed rates are too high or the wooden boxes are given unduly low or preferential rates.

Manufacturers at Atlanta are said to produce more paper boxes than at any point in the Southeast, and they object to any adjustment in the present rates that does not take care of the situation as a whole. Their dissatisfaction would seem to be with the present rather than with the proposed rates. Although the proposed rates lessen the spread between the respective producing points to some extent, they show a marked improvement in regard to the respective distances. The proposed adjustment tends to correct rather than to aggravate the rate situation at Atlanta. As stated, the present rates to Savannah are 51.5 cents from Nashville, 42.5 cents from Chattanooga and Birmingham, and 35.5 cents from Atlanta. The difference, Nashville over Chattanooga and Birmingham, is 9 cents, and over Atlanta 16 cents. Respondents propose to make the rate from Nashville 58 cents, from Chattanooga 49 cents, from Birmingham 51 cents, and from Atlanta 42 cents. The spread in the rates remains the same except from Birmingham, which is made 2 cents over Chattanooga and 7 cents under Nashville.

A rate of 42 cents is in effect from Atlanta to Chattanooga, 137 miles, and from Atlanta to Birmingham, 167 miles. Respondents propose to reduce these rates to 36 and 37 cents, respectively, and to reduce to 36 cents the 38.5-cent rate in effect from Chattanooga to Birmingham, 143 miles. Atlanta pays for a haul of 174 miles to Montgomery a 45-cent rate, which under the proposed revision becomes 38 cents.

Comparison of class rates and paper-box rates, present and proposed

	Distance	Rates				Rate differences ¹			
		Paper boxes		Present		Proposed by presiding commissioner in Docket 13494		Paper boxes	
		Present rate	Proposed rate	Fifth class	Sixth class	Fifth class	Sixth class	Atlanta	Chattanooga
	Miles	Cents	Cents	Cents	Cents	Cents	Cents	Cents	Cents
To Atlanta, Ga., from—									
Nashville, Tenn.	288	42.5	42	59	49.5	56	50		
Chattanooga, Tenn.	137	42	36	42	34	41	36		
Birmingham, Ala.	167	42	37	42	34	44	39		
To Macon, Ga., from—									
Nashville, Tenn.	376	51	47	59	49.5	61	54	17	5
Chattanooga, Tenn.	225	52	42	52	43	50	45	12	24
Birmingham, Ala.	255	52	43	52	43	52	46	13	15
Atlanta, Ga.	83	36	30	36	30	34	30	1	18
To Augusta, Ga., from—									
Nashville, Tenn.	459	55.5	51	67	55.5	67	59	13	5
Chattanooga, Tenn.	308	61	46	61	51	57	51		
Birmingham, Ala.	338	61	47	61	51	59	52	9	1
Atlanta, Ga.	171	43	38	43	40	45	40		
To Savannah, Ga., from—									
Nashville, Tenn.	548	51.5	58	76.5	63	73	65	16	9
Chattanooga, Tenn.	397	42.5	49	68	56	63	56	8	7
Birmingham, Ala.	427	42.5	51	68	56	65	58	9	2
Atlanta, Ga.	260	35.5	42	58	48	52	46		
To Jacksonville, Fla., from—									
Nashville, Tenn.	619	51.5	58	76.5	63	77	69	12	6
Chattanooga, Tenn.	468	42.5	52	68	56	68	60	6	9
Birmingham, Ala.	465	42.5	51	68	56	68	60	5	8
Atlanta, Ga.	331	35.5	40	53	48	59	52		
To Knoxville, Tenn., from—									
Nashville, Tenn.	216	39	41	52	42.5	49	43	2	8
Chattanooga, Tenn.	111	34	33	34	25	38	34	-6	-9
Birmingham, Ala.	254	43	42	55.5	46	52	46	3	5
Atlanta, Ga.	196	48.5	39	48.5	41.5	47	42		6
To Montgomery, Ala., from—									
Nashville, Tenn.	302	45	42	54	44	57	51	4	12
Chattanooga, Tenn.	240	54	42	54	44	50	46	4	5
Birmingham, Ala.	97	34	32	34	27	36	32	-6	-9
Atlanta, Ga.	174	45	38	45	35	45	40		-4

¹ Differences over Atlanta or Chattanooga, in the proposed rates on paper boxes, as compared with differences over the same points in the fifth-class and sixth-class rates recommended by the presiding commissioner in *Southern Class Rate Investigation*, Docket No. 13494.

A more illuminating view of the general situation is afforded by the table on the opposite page, of the present and proposed rates on paper boxes compared with the fifth and sixth class rates, present and as proposed by the presiding commissioner in the *Southern Class Rate Investigation*, *supra*.

Under the proposed schedules the rates from Atlanta to South Carolina ports are made 2 cents over the rates to Georgia ports. This differential should be maintained from all of the producing points. Again, from Nashville to the inland point of Augusta, Ga., 459 miles, the proposed rate of 51 cents is 13 cents higher than the proposed rate from Atlanta to Augusta. No reason appears why the spread, Nashville over Atlanta, should be greater than the amount as respondents propose for the longer haul to Savannah and the other Georgia ports. Indeed the spread might well be slightly lower for the longer distances. As will appear from the foregoing table respondents propose a spread of 16 cents, Nashville over Atlanta, to Savannah, Brunswick taking the same rates as Savannah.

We find that the proposed rates have been justified with the following exceptions: The rate from Chattanooga to Anniston should not exceed 35 cents; the rate from Birmingham to Savannah and Brunswick should not exceed 50 cents; the rates from Nashville should not exceed 54 cents to Savannah and Brunswick, 57 cents to Jacksonville, and 56 cents to Charleston, Beaufort, and Port Royal. The port rates should not be exceeded at intermediate points.

An order will be entered requiring respondents to cancel the suspended schedules without prejudice to the filing of other schedules in conformity with our findings herein.

APPENDIX A

Statement of present and proposed rates on paper boxes, existing fifth class rates, and distances from Nashville and Chattanooga, Tenn., Birmingham, Ala., and Atlanta, Ga., to representative southeastern points

[Boxes, fiberboard, pulpboard or strawboard, without wooden frames (paper boxes) viz: Corrugated, knocked down, flat or folded flat, in boxes, bundles or crates, carload minimum weight 24,000 pounds, subject to rule 34, southern classification, other than corrugated, knocked down, flat, or folded flat, in boxes, bundles, or crates, carload minimum weight 36,000 pounds.]

To—	From Nashville, Tenn.				From Chattanooga, Tenn.			
	Distance	Present	Proposed	Fifth class	Distance	Present	Proposed	Fifth class
	<i>Miles</i>	<i>Cents</i>	<i>Cents</i>	<i>Cents</i>	<i>Miles</i>	<i>Cents</i>	<i>Cents</i>	<i>Cents</i>
Albany, Ga.....	477	79	53	79	326	61	47	61
Americus, Ga.....	434	79	53	79	283	59	46	59
Anniston, Ala.....	233	59	42	59	122	35.5	36	35.5
Athens, Ga.....	360	62	47	62	209	53	42	53
Atlanta, Ga.....	288	142.5	42	59	137	42	36	42
Augusta, Ga.....	459	155.5	51	67	308	61	46	61
Beaufort, S. C.....	571	151.5	58	76.5	420	242.5	51	68
Birmingham, Ala.....	205	142.5	37	51	143	38.5	36	38.5
Brunswick, Ga.....	563	151.5	58	76.5	412	242.5	49	68
Cedartown, Ga.....	248	59	42	59	97	41	32	41
Charleston, S. C.....	596	151.5	58	76.5	445	242.5	51	68
Chattanooga, Tenn.....	151	30	36	42.5				
Columbus, Ga.....	393	59	47	59	242	54	42	54
Cordele, Ga.....	441	79	53	79	290	59	46	59
Dalton, Ga.....	189	59	37	59	38	22.5	19	22.5
Decatur, Ala.....	120	42.5	34	42.5	122	44	35	44
Fitzgerald, Ga.....	478	87.5	58	87.5	327	73.5	47	73.5
Gadsden, Ala.....	203	54	41	54	92	38.5	30	38.5
Huntsville, Ala.....	131	42.5	35	42.5	97	38.5	31	38.5
Jacksonville, Fla.....	619	151.5	58	76.5	468	242.5	52	68
Knoxville, Tenn.....	216	139	41	52	111	34	33	34
Macon, Ga.....	376	151	47	59	225	52	42	52
Milledgeville, Ga.....	393	65	51	65	242	56	45	56
Montgomery, Ala.....	302	145	42	54	240	54	42	54
Port Royal, S. C.....	575	151.5	58	76.5	424	242.5	51	68
Quitman, Ga.....	532	87.5	58	87.5	381	73.5	51	73.5
Rome, Ga.....	229	59	41	59	78	33	28	33
Savannah, Ga.....	548	151.5	58	76.5	397	242.5	49	68
Thomasville, Ga.....	535	87.5	58	87.5	384	73.5	51	73.5
Tifton, Ga.....	481	87.5	58	87.5	330	73.5	47	73.5
Valdosta, Ga.....	528	87.5	58	87.5	377	73.5	49	73.5
Washington, Ga.....	418	67.5	51	67.5	267	59	46	59
Waycross, Ga.....	552	87.5	58	87.5	401	73.5	51	73.5

¹ Applies on boxes, fiberboard, pulpboard, or strawboard, without wooden frames (paper boxes), knocked down, flat, or folded flat, rated fifth class in southern classification (subject to rule 34).

² Commodity rates, carload minimum weight 24,000 pounds, not subject to rule 34.

³ Applies on boxes, fiberboard, pulpboard, or strawboard (paper boxes), knocked down, flat, or folded flat, with or without fillers, straight or mixed, carload minimum weight as per classification (subject to rule 34).

Statement of present and proposed rates on paper boxes, etc.—Continued

To—	From Atlanta, Ga				From Birmingham, Ala.			
	Dis- tance	Pres- ent	Pro- posed	Fifth class	Dis- tance	Pres- ent	Pro- posed	Fifth class
	<i>Miles</i>	<i>Cents</i>	<i>Cents</i>	<i>Cents</i>	<i>Miles</i>	<i>Cents</i>	<i>Cents</i>	<i>Cents</i>
Albany, Ga.....	195	57	40	51	245	59	43	59
Americus, Ga.....	158	48	38	48	221	59	41	59
Anniston, Ala.....	104	42	33	42	63	35.5	25	35.5
Athens, Ga.....	72	33	27	33	239	53	42	53
Atlanta, Ga.....					167	42	37	42
Augusta, Ga.....	171	48	38	48	338	61	47	61
Beaufort, S. C.....	283	¹ 35.5	44	58	450	68	52	68
Birmingham, Ala.....	167	42	37	42				
Brunswick, Ga.....	275	¹ 35.5	42	57	427	¹ 42.5	51	68
Cedartown, Ga.....	60	30	24	30	107	51	33	51
Charleston, S. C.....	308	¹ 35.5	44	58	475	¹ 42.5	52	68
Chattanooga, Tenn.....	137	42	36	42	143	47.5	36	47.5
Columbus, Ga.....	116	42	34	42	157	39.5	37	39.5
Cordele, Ga.....	153	48	38	48	252	59	43	59
Dalton, Ga.....	99	38	32	38	166	52	37	52
Decatur, Ala.....	252	54	42	54	85	34	29	34
Fitzgerald, Ala.....	190	51	40	51	289	73.5	46	73.5
Gadsden, Ala.....	134	44	36	44	61	29.5	24	29.5
Huntsville, Ala.....	206	54	42	54	110	49.5	36	49.5
Jacksonville, Fla.....	331	¹ 35.5	46	58	432	¹ 42.5	51	68
Knoxville, Tenn.....	196	48.5	39	48.5	254	55.5	42	55.5
Macon, Ga.....	88	36	30	36	255	52	43	52
Milledgeville, Ga.....	105	45	36	45	272	56	45	56
Montgomery, Ala.....	174	45	38	45	97	34	32	34
Port Royal, S. C.....	287	¹ 35.5	44	58	454	68	52	68
Quitman, Ga.....	244	59	44	59	335	73.5	47	73.5
Rome, Ga.....	73	33	26	33	126	52	35	52
Savannah, Ga.....	260	¹ 35.5	42	58	419	¹ 42.5	51	68
Thomasville, Ga.....	247	58	44	58	308	73.5	46	73.5
Tifton, Ga.....	193	54	41	54	286	73.5	46	73.5
Valdosta, Ga.....	239	58	42	58	338	73.5	48	73.5
Washington, Ga.....	130	43	27	43	297	59	47	59
Waycross, Ga.....	260	59	44	59	357	73.5	50	73.5

¹ Commodity rates, carload minimum weight 24,000 pounds, not subject to rule 34.

93 I. C. C.

APPENDIX B

Statement of suspended rates on paper boxes, in carloads, from Atlanta, Ga., Chattanooga, Tenn., Birmingham, Ala., and Nashville, Tenn., to points in southeastern territory, compared with the fifth-class and sixth-class rates in effect at the present time, as proposed by the carriers in Docket No. 13494, and as recommended by the presiding commissioner in Docket No. 13494

	Paper boxes	Fifth class			Sixth class		
		Present	Pro-posed ¹	Recom-mended ²	Present	Pro-posed ¹	Recom-mended ²
From Atlanta, Ga., to—	<i>Cents</i>	<i>Cents</i>	<i>Cents</i>	<i>Cents</i>	<i>Cents</i>	<i>Cents</i>	<i>Cents</i>
Albany, Ga.	40	51	55	45	42	49	40
Americus, Ga.	38	48	53	42	40	47	38
Anniston, Ala.	33	42	45	37	34	40	33
Atlanta, Ga.							
Athens, Ga.	27	33	37	31	28	33	28
Augusta, Ga.	38	45	53	45	40	47	40
Birmingham, Ala.	37	42	52	44	34	46	39
Brunswick, Ga.	42	57	59	54	57	52	48
Cedartown, Ga.	24	30	33	28	25	29	25
Charleston, S. C.	44	58	61	57	48	54	51
Chattanooga, Tenn.	36	42	49	41	34	44	36
Columbus, Ga.	34	42	48	38	34	41	34
Cordele, Ga.	38	51	53	43	42	47	38
Dalton, Ga.	32	38	44	36	32	39	32
Decatur, Ala.	42	54	59	52	47	52	46
Fitzgerald, Ga.	40	53	55	46	44	49	41
Gadsden, Ala.	36	44	49	38	34	44	34
Huntsville, Ala.	42	54	55	49	47	52	43
Jacksonville, Fla.	46	58	63	59	48	56	52
Knoxville, Tenn.	39	48.5	54	46	41.5	48	41
Macon, Ga.	30	36	41	34	30	36	30
Milledgeville, Ga.	36	45	50	37	37	44	33
Montgomery, Ala.	38	45	53	45	35	47	40
Moultrie, Ga.	43	56	60	49	46	53	43
Quitman, Ga.	44	59	61	52	49	54	46
Rome, Ga.	26	33	36	30	28	32	27
Savannah, Ga.	42	58	55	52	48	52	46
Thomasville, Ga.	44	59	61	52	49	54	46
Tifton, Ga.	41	54	56	47	45	50	42
Valdosta, Ga.	42	58	55	50	48	52	45
Waycross, Ga.	44	59	61	54	49	54	48
From Chattanooga, Tenn., to—							
Albany, Ga.	47	61	65	57	51	58	51
Americus, Ga.	46	59	63	56	49	56	50
Anniston, Ala.	36	38.5	50	40	27	44	35
Atlanta, Ga.	36	42	49	41	34	44	36
Athens, Ga.	42	53	58	49	41	52	43
Augusta, Ga.	46	61	63	57	51	56	51
Birmingham, Ala.	36	38.5	50	42	27	44	38
Brunswick, Ga.	49	68	68	64	56	60	57
Cedartown, Ga.	32	41	44	36	33	39	32
Charleston, S. C.	51	68	70	67	56	62	59
Chattanooga, Tenn.							
Columbus, Ga.	42	54	59	52	44	52	46
Cordele, Ga.	46	59	63	56	49	56	50
Dalton, Ga.	19	22.5	27	23	17	24	20
Decatur, Ala.	35	44	48	38	33	42	34
Fitzgerald, Ga.	47	73.5	65	59	58	58	52
Gadsden, Ala.	30	38.5	41	35	27	26	31
Huntsville, Ala.	31	38.5	42	35	31	38	31
Jacksonville, Fla.	52	68	72	68	56	64	60
Knoxville, Tenn.	33	34	45	36	25	40	32
Macon, Ga.	42	52	59	50	43	52	45
Milledgeville, Ga.	45	56	63	52	46	56	46
Montgomery, Ala.	42	54	59	50	44	52	46
Moultrie, Ga.	50	73.5	69	60	58	61	53
Quitman, Ga.	51	73.5	70	63	58	62	56
Rome, Ga.	28	33	38	32	28	34	28
Savannah, Ga.	49	68	68	63	56	60	56
Thomasville, Ga.	51	73.5	70	61	58	62	54
Tifton, Ga.	47	73.5	65	59	58	58	52
Valdosta, Ga.	49	73.5	68	61	58	60	54
Waycross, Ga.	51	73.5	70	63	58	62	56

Statement of suspended rates on paper boxes, etc.—Continued

	Paper boxes	Fifth class			Sixth class		
		Present	Proposed ¹	Recom- mended ²	Present	Proposed ¹	Recom- mended
From Birmingham, Ala., to—	<i>Cents</i>	<i>Cents</i>	<i>Cents</i>	<i>Cents</i>	<i>Cents</i>	<i>Cents</i>	<i>Cents</i>
Albany, Ga.....	43	59	60	52	47	53	46
Americus, Ga.....	41	59	57	50	47	51	45
Anniston, Ala.....	25	35.5	34	29	28.5	30	26
Atlanta, Ga.....	37	42	52	44	34	46	39
Athens, Ga.....	42	53	58	50	44	52	45
Augusta, Ga.....	47	61	65	59	51	58	52
Birmingham, Ala.....							
Brunswick, Ga.....	51	68	70	64	56	62	57
Cedartown, Ga.....	33	51	45	37	55.5	40	33
Charleston, S. C.....	52	68	72	68	56	64	60
Chattanooga, Tenn.....	36	47.5	50	42	36	44	38
Columbus, Ga.....	37	39.5	51	43	31	45	38
Cordele, Ga.....	43	59	60	52	47	53	46
Dalton, Ga.....	37	52	52	43	38.5	46	38
Decatur, Ala.....	29	34	40	33	29.5	35	29
Fitzgerald, Ga.....	46	73.5	63	56	58	56	50
Gadsden, Ala.....	24	29.5	33	29	24.5	29	26
Huntsville, Ala.....	36	49.5	50	37	42.5	44	33
Jacksonville, Fla.....	51	68	70	68	56	62	60
Knoxville, Tenn.....	42	55.5	59	52	43	52	46
Macon, Ga.....	43	52	60	52	43	53	46
Milledgeville, Ga.....	45	56	63	54	46	56	48
Montgomery, Ala.....	32	34	44	36	27	39	32
Moultrie, Ga.....	48	73.5	67	57	58	59	51
Quitman, Ga.....	47	73.5	65	59	58	58	52
Rome, Ga.....	35	52	48	38	38.5	42	34
Savannah, Ga.....	51	68	70	65	56	62	58
Thomasville, Ga.....	46	73.5	63	57	58	56	51
Tifton, Ga.....	46	73.5	63	56	58	56	50
Valdosta, Ga.....	48	73.5	67	59	58	59	52
Waycross, Ga.....	50	73.5	69	60	58	62	53
From Nashville, Tenn., to—							
Albany, Ga.....	53	79	73	67	66.5	65	59
Americus, Ga.....	53	79	73	64	66.5	65	57
Anniston, Ala.....	42	59	59	52	49.5	52	46
Atlanta, Ga.....	42	59	59	56	49.5	52	50
Athens, Ga.....	47	59	56	60	49.5	50	53
Augusta, Ga.....	51	67	71	67	55.5	63	59
Birmingham, Ala.....	37	51	52	47	42.5	46	42
Brunswick, Ga.....	58	78.5	80	73	63	71	65
Cedartown, Ga.....	42	59	59	50	49.5	52	45
Charleston, S. C.....	58	76.5	80	76	63	71	68
Chattanooga, Tenn.....	36	42.5	50	41	34.5	44	36
Columbus, Ga.....	47	59	65	60	49.5	58	53
Cordele, Ga.....	53	79	73	65	66.5	65	58
Dalton, Ga.....	57	59	52	45	49.5	46	40
Decatur, Ala.....	34	42.5	41	38	34.5	37	34
Fitzgerald, Ga.....	58	87.5	80	67	70	71	59
Gadsden, Ala.....	41	54	56	49	74.5	50	43
Huntsville, Ala.....	35	42.5	48	38	34.5	42	34
Jacksonville, Fla.....	58	76.5	80	77	63	71	69
Knoxville, Tenn.....	41	52	56	50	42.5	50	45
Macon, Ga.....	47	59	65	61	49.5	58	54
Milledgeville, Ga.....	51	65	70	61	53.5	62	54
Montgomery, Ala.....	42	54	59	56	44	52	50
Moultrie, Ga.....	58	87.5	80	69	70	71	62
Quitman, Ga.....	58	87.5	80	72	70	71	64
Rome, Ga.....	41	59	56	49	49.5	50	43
Savannah, Ga.....	58	76.5	80	73	63	71	66
Thomasville, Ga.....	58	87.5	80	69	70	71	62
Tifton, Ga.....	58	87.5	80	68	70	71	60
Valdosta, Ga.....	58	87.5	80	71	70	71	63
Waycross, Ga.....	58	87.5	80	72	70	71	64

¹ Proposed by carriers in Docket No. 13494.² Recommended by presiding commissioner in Docket No. 13494.

INVESTIGATION AND SUSPENSION DOCKET No. 2216

COKE FROM KENTUCKY, TENNESSEE, AND VIRGINIA
TO CINCINNATI, OHIO, GROUP

Submitted October 9, 1924. Decided December 3, 1924

Proposed increased rates on coke, in carloads, from points in southwestern Virginia, Benham, Ky., LaFollette and Chattanooga, Tenn., to Cincinnati, Ohio, and certain points in the vicinity thereof, and to Maysville, Ky., found not justified. Suspended schedules ordered canceled and proceeding discontinued.

N. W. Proctor for Louisville & Nashville Railroad Company and Southern Railway Company and *A. L. Holton* for Interstate Railroad Company.

F. M. Renshaw for Cincinnati Chamber of Commerce; *E. DeL. Wood* for Chattanooga Manufacturers Association and Chattanooga Coke & Gas Company; *E. H. Smith* for Andrews Steel Company; *W. E. Willey* for Procter & Gamble Company; *J. W. Chalkley* for Virginia Coal Operators Association, Norton Coal Company, J. A. Esser Coke Company, Wise Coal & Coke Company, Whitney-Kemmerer Company, and Stonega Coke & Coal Company; *A. C. Stephenson* for Chattanooga Coke & Gas Company; *S. C. Higgins* for New River Coal Operators' Association and Smokeless Coal Operators Association of West Virginia.

REPORT OF THE COMMISSION

DIVISION 3, COMMISSIONERS HALL, CAMPBELL, AND COX

BY DIVISION 3:

By schedules filed to become effective August 20, 1924, it is proposed to increase to \$2.90 the present rate of \$2.59 on coke, in carloads, applying from points of production in southwestern Virginia served by the Louisville & Nashville and Interstate Railroad, from Benham, Ky., and LaFollette, Tenn., on the Louisville & Nashville, and from Chattanooga, Tenn., served by the Cincinnati, New Orleans & Texas Pacific, to Cincinnati, Ohio, Covington, Ky., and certain other points in Kentucky in the immediate vicinity of Cincinnati; also from Louisville & Nashville and Interstate Railroad points to Maysville, Ky. It is further proposed to increase to \$2.90 the present rate of \$2.48 from LaFollette to Erlanger, Ky., located near Cincinnati.

Rates are stated in amounts per net ton except as otherwise noted.

Upon protest of various producers, consumers, and other interested parties the operation of the schedules was suspended until December 18, 1924. Rates from points on the Interstate Railroad are published by the Louisville & Nashville. The former carrier does not approve the proposed increase, but on the contrary maintains that the present rates are just and reasonable. The proposed rate is the same as that now in effect to Cincinnati from the New River district in West Virginia, served by the Chesapeake & Ohio, and from ovens in West Virginia, served by the Norfolk & Western. Respondents say that it was published for the purpose of bringing about a parity of rates from ovens served by them and those served by the Chesapeake & Ohio and the Norfolk & Western.

Rates from the original coke-producing points on the Louisville & Nashville and from points in West Virginia on the Chesapeake & Ohio and Norfolk & Western were on a parity from 1903 until August 26, 1920. Rates from other points of origin on the Louisville & Nashville, from points on the Interstate Railroad and from Chattanooga were established on the same basis at various dates subsequent to 1903. Under the general increases of August 26, 1920, rates from and to the points herein considered were increased 25 per cent, that being the amount of the increase authorized in the southern group. The rates from ovens in West Virginia served by the Chesapeake & Ohio and Norfolk & Western were increased 40 per cent, which was the increase authorized in the eastern group. The long-standing parity of rates from these districts was thus terminated and the rates from Chesapeake & Ohio and Norfolk & Western points became 34.5 cents higher than those from the origin points described herein. By the general reduction of July 1, 1922, this difference was reduced to 31 cents.

The volume of movement of coke to Cincinnati is comparatively small. During the 12 months' period from July 1, 1923, to June 30, 1924, the Louisville & Nashville handled 304 cars of coke to points in the Cincinnati district north of the Ohio River. Upon the basis of this tonnage the gross increase in revenue of the Louisville & Nashville resulting from the proposed rate would amount to \$3,204 annually. Practically all of the coke handled by the Louisville & Nashville at Cincinnati is delivered to industries located on connecting lines. Most of this tonnage is destined to the plant of the Procter & Gamble Company, located at Ivorydale, Ohio, within the switching limits of Cincinnati.

Switching charges ranging from about 8 to 32 cents are maintained by connections of the Louisville & Nashville for the service from the tracks of that carrier to industries located on connecting lines. The Louisville & Nashville does not at the present time, nor did it prior to August 26, 1920, absorb these charges. The Chesa-

peake & Ohio absorbs switching charges of connecting lines at Cincinnati on coke traffic from the West Virginia ovens. The Cincinnati, New Orleans & Texas Pacific now absorbs switching charges of its connections in the Cincinnati switching district on traffic from Chattanooga. At the hearing the Louisville & Nashville agreed to make the same absorptions on traffic to the Cincinnati district from the points of origin on its line if the proposed rate is allowed to become effective. If provision were made for the absorption of switching charges from Louisville & Nashville and Interstate Railroad points the maximum increase in the through charges would be about 23 cents. The switching charge from Louisville & Nashville tracks to the plant of the Procter & Gamble Company at Ivorydale is \$6.30 per car or about 18.5 cents per ton on the basis of 34 tons to the car. The increase in the through charges to the plant of that company would therefore amount to about 12.5 cents. Industries located on the Louisville & Nashville would have to bear the full amount of the proposed increase, or 31 cents. The tariffs of the Norfolk & Western do not provide for the absorption of switching charges of connections on this traffic. The record shows that the proposed increase was published at the instance of the Chesapeake & Ohio, which threatened to reduce its rates to the Cincinnati district if the increase were not made.

In justification of the proposed rate respondents submitted comparisons with rates from other large coke-producing centers, some of which were prescribed or approved by us. The following table is compiled from exhibits presented by respondents:

	Distance	Rate		Distance	Rate
From coke-producing points on L. & N. and Interstate R. R. to—			From Ashland, Ky., to—	<i>Miles</i>	
Cincinnati, Ohio (present).....	296	\$2. 59	Gaston, Ind.	260	\$2. 90
Cincinnati, Ohio (proposed).....	296	2. 90	Riverdale, Ind.	266	2. 77
Maysville, Ky. (present).....	266	2. 59	Berne, Ind.	278	2. 77
Maysville, Ky. (proposed).....	266	2. 90	Fairmount, Ind.	289	2. 90
From Chattanooga, Tenn., to—			Crawfordsville, Ind.	299	2. 90
Cincinnati, Ohio (present).....	338	2. 59	Peru, Ind.	307	3. 02
Cincinnati, Ohio (proposed).....	338	2. 90	Montgomery, Ind.	308	3. 40
From Chicago, Ill., to—			Fort Wayne, Ind.	311	3. 02
Peoria, Ill.	250	2. 90	From Connellsville district to—		
Indianapolis, Ind.	255	2. 77	Youngstown, Ohio.....	134	¹ 2. 27
Fernald, Ohio.....	264	2. 90	Bellaire, Ohio.....	144	2. 27
Miami, Ohio.....	268	2. 90	Alliance, Ohio.....	152	2. 52
Urbana, Ohio.....	268	3. 02	Canton, Ohio.....	170	¹ 2. 52
Marion, Ohio.....	269	2. 77	Marion, Ohio.....	195	¹ 3. 40
Crothersville, Ind.	270	2. 90	Cleveland, Ohio.....	201	¹ 2. 77
Bellevue, Ohio.....	275	3. 40	Akron, Ohio.....	202	2. 65
Cincinnati, Ohio.....	285	2. 90	Hanover, Ohio.....	219	2. 77
Memphis, Ind.	293	2. 90	Zanesville, Ohio.....	223	2. 52
Sandusky, Ohio.....	297	2. 90	Crestline, Ohio.....	258	¹ 3. 40
Ontario, Ohio.....	298	2. 90	Columbus, Ohio.....	260	2. 77
Vernillion, Ohio.....	302	3. 40	Galion, Ohio.....	271	¹ 3. 40
Jeffersonville, Ind.	311	2. 90	Robesonia, Pa.	297	¹ 3. 03
Columbus, Ohio.....	315	3. 02	Dunkirk, Ohio.....	306	3. 40
			Xenia, Ohio.....	311	3. 40
			Toledo, Ohio.....	329	3. 28
			Buffalo, N. Y.	340	¹ 3. 28

¹ Originally prescribed in *Coke Producers Assn. of Connellsville v. B. & O. R. R. Co.*, 27 I. C. C. 125.

² Originally approved in *Galion Iron Works & Mfg. Co. v. B. & O. R. R. Co.*, 47 I. C. C. 136.

³ Originally approved in *Wickwire Steel Co. v. N. Y. C. & H. R. R. Co.*, 27 I. C. C. 168, 30 I. C. C. 415.

It is further shown that the proposed rate from Louisville & Nashville and Interstate Railroad points to Cincinnati, an average distance of 296 miles, is the same as the rate applicable for the same distance under the mileage scale on coke in effect in central territory. The present rate for the distance of 296 miles under the scale on coke originally prescribed in *Seaboard By-Product Coke Co. v. Director General*, 62 I. C. C., 317, for application from Seaboard, N. J., to points in New England, New York, and New Jersey is \$3.40. For 266 miles, the average distance from Louisville & Nashville and Interstate Railroad points to Maysville, the rate under that scale is \$3.20.

In connection with the comparison submitted respondents observe that the haul from Virginia ovens as far as Middlesborough, Ky., is difficult and expensive because of steep grades and sharp curves, that the points of origin indicated in the comparisons submitted are large coke-producing centers, that these rates apply for one-line hauls, that in central territory the traffic density is much greater, operating conditions are more favorable, and the general level of rates is lower than in southern territory.

Following is a statement of the revenue per ton-mile yielded by the present and proposed rates:

	Distance	Rate		Ton-mile earnings	
		Present	Proposed	Present	Proposed
	<i>Miles</i>			<i>Mills</i>	<i>Mills</i>
From ovens on L. & N. and Interstate R. R. to—					
Cincinnati, Ohio.....	296	\$2. 59	\$2. 90	8. 7	9. 8
Maysville, Ky.....	266	2. 59	2. 90	9. 7	10. 8
From Chattanooga, Tenn., to—					
Cincinnati, Ohio.....	338	2. 59	2. 90	7. 6	8. 5

The average ton-mile earnings of the Louisville & Nashville for the year 1923 on all traffic were 9.61 mills, and on coke 13.1 mills. It is shown that the proposed rate of \$2.90 on coke from Louisville & Nashville and Interstate Railroad points to Cincinnati would yield revenue per car of \$98.60 based upon the average load of 34 tons as compared with revenue per car of \$97 yielded by the rate of \$1.94 on coal from and to the same points based upon an average load of 50 tons. The latter rate was found not unreasonable in *Cincinnati Asso. of Purchasing Agents v. L. & N. R. R. Co.*, 89 I. C. C. 285. The complainant in that case attacked as unreasonable rates on coal from Louisville & Nashville mines in Kentucky, Tennessee, and Virginia to the Cincinnati district. An increase in these rates had been made on June 16, 1921, which was a part of a general readjustment made by the Louisville & Nashville for the purpose,

93 I. C. C.

among other things of restoring long-established differentials and competitive relationships between mine groups on its line on the one hand and competing mines in the Inner Crescent group on the other. These relationships had been disrupted by the general increase of August 26, 1920. The increase made by the Louisville & Nashville on coal to Louisville, effective on the same date, was found not unreasonable or otherwise unlawful in *Southern Appalachian Coal Operators v. L. & N. R. R. Co.*, 83 I. C. C. 136. Certain increases made by the Louisville & Nashville for the same purpose in the rates on coal from mines in eastern Kentucky and Tennessee and southwestern Virginia to points in central territory were approved in *Coal from Kentucky, Tennessee, and Virginia*, 60 I. C. C. 166.

Protestants take the position that the proposed rate is unreasonably high and that it would result in undue prejudice to producers marketing coke at Cincinnati and the other destinations named, and to consumers there located, and in undue preference of various points of production, and other Ohio River crossings. The following table is compiled from exhibits submitted by protestants comparing the rates to Cincinnati with rates from and to numerous points:

	Distance	Rate	Ton-mile earnings
	<i>Miles</i>		<i>Mills</i>
From LaFollette, Tenn., to—			
Cincinnati, Ohio (present).....	239	\$2.59	10.9
Cincinnati, Ohio (proposed).....	239	2.90	12.1
From Virginia ovens to—			
Cincinnati, Ohio (present).....	305	2.59	8.5
Cincinnati, Ohio (proposed).....	305	2.90	9.5
From Chattanooga, Tenn., to—			
Cincinnati, Ohio (present).....	338	2.59	7.6
Cincinnati, Ohio (proposed).....	338	2.90	8.5
<i>Points south of Ohio River to points north thereof</i>			
From Dayton, Tenn., to—			
Cincinnati, Ohio.....	300	2.48	8.3
From Rathburn, Tenn., to—			
Cincinnati, Ohio.....	317	2.48	7.8
From Earlington, Ky., to—			
Peoria, Ill.....	343	2.52	7.3
Chicago, Ill.....	345	2.76	8
From Chattanooga, Tenn., to—			
Cairo, Ill.....	351	2.59	7.3
From Pocahontas, Va., to—			
Zanesville, Ohio.....	384	2.77	7.2
From Coaldale, Ky., to—			
Columbus, Ohio.....	396	2.65	6.7
<i>Points north of Ohio River</i>			
From St. Louis, Mo., to—			
Chicago, Ill.....	294	2.00	6.8
<i>Points south of Ohio River</i>			
From Chattanooga, Tenn., to—			
Macon, Ga.....	240	2.48	10.3
Memphis, Tenn.....	314	2.37	7.5
Albany, Ga.....	330	2.59	7.8
Mobile, Ala.....	412	3.15	7.6
Savannah, Ga.....	415	2.93	7.1

	Distance	Rate	Ton-mile earnings
<i>Points south of Ohio River—Continued</i>			
<i>From Chattanooga, Tenn., to—Continued.</i>	<i>Miles</i>		<i>Mills</i>
Vicksburg, Miss.-----	436	\$3. 15	7. 2
New Orleans, La.-----	498	3. 15	6. 3
<i>From Birmingham, Ala., to--</i>			
Macon, Ga.-----	255	2. 48	9. 7
Biloxi, Miss.-----	336	2. 59	7. 7
Brunswick, Ga.-----	411	2. 93	7. 1
Savannah, Ga.-----	435	2. 99	6. 8
Jacksonville, Fla.-----	487	3. 04	6. 2
<i>From LaFollette, Tenn., to--</i>			
Birmingham, Ala.-----	295	2. 59	8. 7
Ironton, Ala.-----	315	2. 14	6. 8
Atlanta, Ga.-----	349	2. 20	8. 8
<i>From Dayton, Tenn., to--</i>			
Memphis, Tenn.-----	351	2. 37	6. 7
Savannah, Ga.-----	453	3. 04	6. 7
<i>From Appalachia, Va., to--</i>			
Clarksville, Tenn.-----	398	2. 10	5. 2
Anniston, Ala.-----	413	3. 04	7. 3

To show that the proposed rates would result in undue prejudice representatives of the producers affected direct attention to respondents' failure to make a similar increase from Birmingham, Ala. The Cincinnati protestants point out that although respondents propose to increase the rate to Cincinnati for the alleged purpose of restoring former relationships, no increase is proposed to Louisville, Ky., and other Ohio River crossings, where a similar situation exists. The following table is illustrative of this situation:

From—	To Cincinnati, Ohio			To Louisville, Ky.			To Evansville, Ind.		
	Distance	Rate	Ton-mile earnings	Distance	Rate	Ton-mile earnings	Distance	Rate	Ton-mile earnings
	<i>Miles</i>		<i>Mills</i>	<i>Miles</i>		<i>Mills</i>	<i>Miles</i>		<i>Mills</i>
LaFollette, Tenn.-----	239	¹ \$2. 59	10. 9	224	\$2. 37	10. 6	379	\$3. 38	8. 9
Do.-----	239	² 2. 90	12. 1						
Virginia group.-----	305	² 2. 59	8. 5	290	2. 37	8. 2	445	3. 38	7. 5
Do.-----	305	² 2. 90	9. 5						
Chattanooga, Tenn.-----	338	¹ 2. 59	7. 6	316	2. 59	8. 1	309	2. 59	8. 3
Do.-----	338	² 2. 90	8. 5						
Birmingham, Ala.-----	481	3. 38	7. 02	392	2. 93	7. 5	363	2. 93	8. 7

¹ Present rate.² Proposed rate.

There is no substantial movement of coke from Birmingham to Cincinnati under the present adjustment but it is the view of protestants that Birmingham will be enabled to reach this market if the proposed rate is allowed to become effective, notwithstanding its much greater distance, and will be given an undue advantage. Coke sells on a small margin of profit per ton to the producer. The record shows that the cost of production at Birmingham is materially less than at Chattanooga.

The rate of the Chesapeake & Ohio from West Virginia points to Louisville is \$2.65 as compared with \$2.37 from ovens served by the Louisville & Nashville and Interstate Railroad. The rates from both producing territories were formerly the same and in this case also the present disparity resulted from the increase made on August 26, 1920.

Respondents state that for a number of months they have been engaged in a complete readjustment of the rates from the producing territory here considered as well as from Birmingham to the Ohio River crossings and points in central territory. It is expected that this work will soon be brought to a conclusion. On February 6, 1924, the Louisville & Nashville filed a tariff carrying the increase now proposed to Cincinnati and an increase to \$2.65 to Louisville. This tariff was withdrawn on account of certain oversights. No revision was made in the succeeding tariff of the rates to Ohio River crossings except Cincinnati because of lack of agreement among the interested carriers.

Although the record does not indicate that the proposed rate to Cincinnati would be unreasonable, it would apparently result in undue prejudice at that point and in undue preference of other Ohio River crossings where a similar increase is not made. We find that the proposed schedules have not been justified. An order will be entered requiring their cancellation and discontinuing this proceeding.

No. 15065

LAFAYETTE BOX BOARD & PAPER COMPANY v. CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY ET AL.

Submitted June 27, 1924. Decided November 25, 1924

Rate on bituminous coal, in carloads, from Harrisburg, Ill., to LaFayette, Ind., from October, 1922, to June, 1923, inclusive, found not to have been or to be unreasonable. Complaint dismissed.

Isaac Born and *O. P. Gothlin* for complainant.

L. P. Day for defendants.

REPORT OF THE COMMISSION

DIVISION 3, COMMISSIONERS HALL, COX, AND McMANAMY

BY DIVISION 3:

Exceptions were filed by complainant to the report proposed by the examiner. Reply thereto was made by defendant and the case was orally argued.

Complainant, a corporation, manufactures strawboard at LaFayette, Ind. By complaint filed July 16, 1923, it alleges that the rate of \$1.96 charged for the transportation of 161 carloads of bituminous coal from Harrisburg, Ill., to LaFayette, Ind., from October, 1922, to June, 1923, inclusive, was unjust and unreasonable. We are asked to award reparation and to prescribe a reasonable rate for the future. Rates are stated in amounts per net ton.

Harrisburg is in the southern Illinois coal group. The shipments moved over the Cleveland, Cincinnati, Chicago & St. Louis Railway, hereinafter referred to as the Big Four, to Danville, Ill., the New York Central to Sheff, Ind., and the Big Four to LaFayette, 273 miles. Charges were collected at the applicable rate of \$1.96, still in effect. The rate sought for the future is \$1.64, and reparation to that basis is asked.

Complainant's plant is served by two carriers, the Big Four and the Chicago, Indianapolis & Louisville. The Lake Erie & Western has trackage rights over the Big Four and connects with that line a short distance from complainant's plant. The rate of \$1.96 from Harrisburg to LaFayette applied over two other routes, to wit: Big Four to Danville, New York Central to Handy, Ind., Lake Erie &

Western to LaFayette, 252 miles; and Big Four to Danville, Wabash to LaFayette, 236 miles.

Rates on coal from mines in southern Illinois to Chicago, Ill., are grouped as to points of origin, and there are fixed relationships between the rates from the various groups to Chicago. To Indiana destinations, however, with the possible exception of South Bend, rates from southern Illinois points are not grouped, and it was testified that distance was not a controlling factor in fixing the rates from southern Illinois mines to Indiana points. A witness for defendants stated that he did not know what was the basis for the rate to LaFayette.

On April 18, 1917, the rate from Harrisburg to LaFayette was \$1.10, applicable over all three routes. Later it was increased to \$1.25. On June 25, 1918, it became \$1.60 over the Big Four-Lake Erie & Western route, but, for some reason which defendants' witness could not explain, a rate of \$1.46 was published to apply over the two other routes. At about this time pressure was brought to bear for a revision of coal rates generally, and later the \$1.60 rate was reduced to \$1.55 and the \$1.46 rate to \$1.45. On August 26, 1920, the rate over the Big Four-Lake Erie & Western route was increased to \$2.17, and the \$1.45 rate to \$2.03. In June, 1922, the rates over all three routes were made the same, \$2.17, by applying the general increases to the rates in effect on April 18, 1917. That rate was reduced on July 1, 1922, to \$1.96.

Complainant's evidence dealt with the history of the rates from various coal-mining groups in Illinois, particularly from southern Illinois groups, but did not explain the basis upon which the rate from Harrisburg to LaFayette was made. The rate of \$1.64 sought for the future is the rate from Harrisburg to Indianapolis.

The following table, compiled from exhibits of record, compares the rate charged and the earnings thereunder with rates from Harrisburg to various destinations:

From Harrisburg to—	Com- plainant's distance	Defend- ant's distance	Rate	Ton-mile earnings (com- plainant) ¹	Ton-mile earnings (defend- ant) ²
	<i>Miles</i>	<i>Miles</i>		<i>Mills</i>	<i>Mills</i>
LaFayette.....	236		\$1. 96	8. 2	
Chicago.....	318	313	³ 1. 96	6. 2	6. 2
Indianapolis.....	244	207	1. 64	6. 7	7. 9
Anderson, Ind.....	280	243	1. 89	6. 7	7. 7
Muncie, Ind.....	300	261	2. 02	6. 7	7. 7
Fort Wayne, Ind.....	363		2. 14	5. 9	
Marion, Ind.....	313		2. 02	6. 5	

¹ Computed upon basis of complainant's distances.

² Computed upon basis of defendant's distances.

³ The rate to Chicago over most routes is \$1.95.

The mileages used by complainant were said to be the direct-line mileages except that, in instances where the tariff specified a route, the mileage over the route specified was used. Defendant's mileages are shorter in most instances than those used by complainant, and were introduced for the purpose of showing that many of complainant's mileages were figured over indirect routes.

Complainant also compared the rate assailed with rates from various mining groups in southern Illinois to destinations in Illinois and Indiana, and with the rates on ex-river coal from Cincinnati to Indiana destinations. In its comparisons complainant used 125 rates which yield the following ton-mile earnings: 6 yield less than 5 mills, 22 between 5 and 6 mills, 64 between 6 and 7 mills, and 11 between 7 and 7.5 mills. Many of the comparisons are of doubtful value for two reasons. It does not appear whether the proper distances were used or what basis was used in constructing the rate from Harrisburg to LaFayette, although the basis for the compared rates to destinations in Illinois was explained.

A witness for complainant testified that defendants performed the same service on traffic to Chicago as to LaFayette, except that the terminal operations at the former point are more expensive. On traffic to Chicago, LaFayette, or Fort Wayne the trains are broken up at Paris, Ill.

Defendants' witness testified that the rates from southern Illinois points to Chicago are grouped as to points of origin and that the Chicago rate is applied over the various railroads to a large number of intermediate points. Thus the Chicago rate applies to all points north of Handy, Ind., on the New York Central. The rate to Handy, the junction point of the New York Central and Lake Erie & Western, is \$1.92. To Hoopeston, Ill., the junction of the Chicago & Eastern Illinois and the Lake Erie & Western, the rate is \$1.92, and to all points north of Hoopeston on the Chicago & Eastern Illinois the Chicago rate of \$1.95 is applicable. From southern Illinois mines, not including Harrisburg, the Illinois Central in connection with the Lake Erie & Western, maintains a joint rate of \$1.95 to Chicago. That rate is also applicable at intermediate points on the latter carrier, Ambia, Ind., to LaFayette, inclusive, and Gibson City, Ind., to LaFayette, inclusive. A witness for defendants testified that the rate to Chicago is depressed because of carrier competition.

The rate of \$1.64, which is sought for the future, yields ton-mile earnings of 6.9 mills as compared with earnings of 8.2 mills per ton-mile under the rate charged. In *Fox Paper Co., v. Director General*, 68 I. C. C. 479, we prescribed rates from Indiana mines to destinations in Ohio which for distances of 184.9 and 238.6 miles yielded

ton-mile earnings of 8.9 and 7.1 mills, respectively, in August, 1918. In *Western Stoneware Co. v. C., B. & Q. R. R. Co.*, 63 I. C. C. 215, we found not unreasonable a rate of \$2.245 from Oakland City, Ind., to Monmouth, Ill., 319 miles, yielding 7.03 mills per ton-mile in 1920, prior to the effective date of the general increase made in August of that year. In *Ideal Fuel Co. v. Director General*, 64 I. C. C. 555, we found not unreasonable a rate of \$2.30 from Herrin, Ill., to Chicago, 312 miles, which in August, 1918, yielded ton-mile earnings of 7.4 mills.

We find that the rate assailed was not and is not unreasonable. The complaint will be dismissed.

93 I. C. C.

No. 15443

OMAHA CHAMBER OF COMMERCE TRAFFIC BUREAU,
FOR TRIMBLE BROTHERS, INCORPORATED, ET AL. v.
ATLANTA, BIRMINGHAM & ATLANTIC RAILWAY
COMPANY ET AL.

Submitted October 1, 1924. Decided November 25, 1924

Rates on grapefruit, in straight carloads, and in mixed carloads with oranges, from points in Florida to Omaha, Nebr., found not unreasonable and, except in one instance, not in violation of the fourth section. Complaint dismissed.

H. D. Bergen for complainants.

Henry Thurtell for defendants.

REPORT OF THE COMMISSION

DIVISION 3, COMMISSIONERS HALL, CAMPBELL, AND COX

BY DIVISION 3:

Exceptions were filed by complainants to the report proposed by the examiner.

By complaint filed November 26, 1923, on behalf of Trimble Brothers and Gilinsky Fruit Company, corporations, dealers in fruit and produce at Omaha, Nebr., it is alleged that the rates charged on grapefruit, in straight carloads, and in mixed carloads with oranges, shipped between February 19, 1921, and January 3, 1922, from points in Florida to Omaha, were unreasonable and in excess of the aggregate of intermediate rates to and from Jacksonville, Fla. The prayer is for reparation only. The complaint was presented informally on March 2, 1923. Rates will be stated in amounts per standard package.

The points of origin are Haines City, Winter Haven, Arcadia, and Palmetto on the Atlantic Coast Line, hereinafter called the Coast Line, about 185, 197, 258, and 271 miles, respectively, from Jacksonville; Miami, Cocoanut Grove, and Homestead on the Florida East Coast about 366, 371, and 394 miles, respectively, from Jacksonville; and Manatee and Manavista on the Seaboard Air Line, hereinafter called the Seaboard, about 242 miles from Jacksonville. Palmetto is also served by the Seaboard. Nineteen shipments moved from various points and charges were collected at joint commodity rates of \$1.385 from Haines City and Winter Haven, \$1.42 from

Manatee, Manavista, and Palmetto, \$1.435 from Arcadia, \$1.60 from Cocoanut Grove and Miami, and \$1.62 from Homestead. These rates were established as a result of *Florida Fruit & Vegetable Asso. v. A. C. L. R. R. Co.*, 17 I. C. C. 552, decided February 8, 1910, and *Florida Fruit & Vegetable Shippers v. A. C. L. R. R. Co.*, 22 I. C. C. 11, decided November 6, 1911, as revised under the subsequent general increases. In the former case we prescribed proportional rates from Jacksonville and other Florida basing points to points north of the Ohio River, including Omaha, and in the latter case we prescribed so-called gathering rates from points in southern Florida to Jacksonville and other Florida basing points, and in connection therewith said:

While carriers will be directed to establish new gathering charges from points of production up to Jacksonville, when for beyond, they may, if they so elect, in lieu of publishing such gathering rates, establish through rates from the points of production, provided those rates do not exceed the sum of the rates to and from the base point established by the Commission.

The rate situation as to shipments from points on the Coast Line and the Seaboard is different from that as to shipments from points on the Florida East Coast. From Coast Line and Seaboard points the joint rates were published in single amounts and were increased $33\frac{1}{3}$ per cent in line with authority conferred by us in *Increased Rates, 1920*, 58 I. C. C. 220, as to "joint * * * rates between points in one group and points in other groups." These specific joint rates were not in excess of any aggregate of intermediates contemporaneously effective but complainants insist that they were unreasonable because the increase of $33\frac{1}{3}$ per cent in these rates was contrary to the spirit of *Increased Rates, 1920, supra*, and contrary to the method which should have been observed if the theory of their establishment as indicated in *Florida Fruit & Vegetable Asso. v. A. C. L. R. R. Co., supra*, and *Florida Fruit & Vegetable Shippers v. A. C. L. R. R. Co., supra*, had been given proper consideration. They consider it plain from those decisions that the rates to and from Jacksonville are based upon entirely distinct considerations and that, irrespective of the form of publication, whether as specific joint rates or as combinations of intermediates, each factor or component of the through charge should have been accorded the percentage increase applicable in the territory in which it was effective. Nothing in the decisions cited indicates that the mode of applying general increases or reductions to specific joint rates based thereon should differ from that used in the case of specific joint rates based on the sum of the local rates to and beyond an intermediate point. The contention is without merit.

The rates from Cocoanut Grove, Miami, and Homestead, on the Florida East Coast were not published in single amounts. The

governing tariff was made up on the sectional plan, the proportional rates in section 1 being the so-called gathering rates to Jacksonville, and the proportional rates in section 2 being the rates from Jacksonville to the various destinations. The tariff also contained a provision to the effect that the sums of the proportional rates in the two sections would be "joint through rates." Complainants insist that these rates are on a different footing from those of the Coast Line and the Seaboard and contend that they are in excess of the aggregate of the intermediate rates within the meaning of the fourth section. They refer to no tariffs, aside from the one providing the specific manner of constructing the joint rates, as containing rates to and from Jacksonville on a lower basis than the rates assailed. Examination of our tariff files shows that on February 19, 1921, date of the shipment from Homestead, a local rate of 49 cents to Jacksonville was published in Florida East Coast tariff I. C. C. No. 467. That rate, if added to a proportional rate of \$1.10 from Jacksonville to Omaha, published in Glenn's I. C. C. No. A-255, would have resulted in a combination rate of \$1.59 as against the joint rate of \$1.62 charged. It is apparent that the Florida East Coast tariff was intended to apply only on intrastate shipments but, inasmuch as that intention was not expressly set out, the local rate to Jacksonville would have applied in the absence of a joint rate on a through shipment to Omaha made prior to March 20, 1921. On that date the tariff was amended so as to make it applicable on intrastate traffic only. The shipments from Miami and Cocoanut Grove were made after March 20, 1921. Complainants base their allegation that the aggregate-of-intermediates clause of the fourth section was violated as to those shipments upon the premise that cancellation of the provision linking up the proportional rates to and beyond Jacksonville into "joint through rates" would leave in effect the two proportional rates as a combination. Since that combination would have been subject to increases of 25 per cent south of Jacksonville and 33⅓ per cent beyond Jacksonville the resulting through rate would have been lower than the joint rate increased by 33⅓ per cent. A joint rate does not violate the aggregate-of-intermediates clause of the fourth section unless it exceeds the sum of the rates contemporaneously effective to and from some intermediate point. It can not be said to violate that clause if it must first be broken up into component parts in order to provide rates to and from an intermediate point which are lower in the aggregate, because in such event the basis of comparison is destroyed.

A joint rate which does not violate the aggregate-of-intermediates clause of the fourth section may still be unreasonable because it exceeds the through charges which would be applicable in the event

of its concellation. In *Windsor Turned Goods Co. v. C. & O. Ry. Co.*, 18 I. C. C. 162, we laid down the rule that—

except in special and unusual circumstances * * * the fair measure of the reasonableness of a joint rate that exceeds the combination between the same points via the same route * * * will hereafter be held to be the lowest combination that would lawfully apply if the joint through rate were cancelled.

In several later cases we have found joint rates which exceeded such combinations not unreasonable because of a showing that one or both factors of the lower combinations were depressed rates. In this case if the provision which linked up the components to and from Jacksonville into a "joint through rate" had been canceled the applicable combination would have been the proportional rates to and beyond Jacksonville. Under the authority of *Increased Rates, 1920, supra*, and under the tariffs of the Florida East Coast those components would have been increased 25 per cent south of Jacksonville and $33\frac{1}{3}$ per cent, Jacksonville to Omaha, resulting in combination rates of 157 cents from Miami and Cocanut Grove and 159 cents from Homestead. Although the record does not show that the proportional rates to and from Jacksonville as thus increased would have been depressed rates we are of the opinion that the situation here before us may be classed as a "special and unusual circumstance" sufficient to justify a departure from a strict application of the principle of *Windsor Turned Goods Co. v. C. & O. Ry. Co.*, *supra*. The reason is plain. Joint rates constructed as are those here in issue are higher than combinations of local or proportional rates when, as here, one factor of the combination covers transportation within 25 per cent territory, and the other factor covers transportation within 35 per cent territory or interterritorial traffic. The contrary is true on traffic moving between the higher-rated territories. It is not a fair application of the rule to condemn these joint rates as unreasonable inasmuch as no compensating advantage is accorded when the situation is reversed. *Virginia-Carolina Chemical Co. v. A. C. L. R. R. Co.*, 78 I. C. C. 107.

We find that the rates assailed were not unreasonable and, with the exception of the rate from Homestead, were not in violation of the aggregate-of-intermediates clause of the fourth section. The fourth-section violation as to the rate from Homestead was removed March 20, 1921.

The complaint will be dismissed.

CAMPBELL, *Commissioner*, dissenting:

I think the assailed rates are unreasonable to the extent that they exceeded the aggregate of the intermediate rates to and beyond Jacksonville. It is true that we authorized the changes under *Ex*

parte 74 that brought about these fourth-section violations, but we did not authorize the violations, and the presumption is, as we have held many times, that a rate so violating the fourth section is *prima facie* unreasonable. The majority find, in effect, that the presumption is rebutted by the fact that we authorized the particular varying increases. I do not follow that reasoning. If the factor up to Jacksonville was reasonable when increased 25 per cent on traffic to destinations in southern territory, it was reasonable on traffic to Omaha. Certainly it was not unduly low, and there is nothing on this record which would give the impression that the lower combinations would not have been reasonable maximum rates on this traffic.

No. 15108

SHOTWELL MANUFACTURING COMPANY v. CHICAGO
& NORTH WESTERN RAILWAY COMPANY

Submitted March 31, 1924. Decided November 25, 1924

Rate on pop corn, in carloads, from Arthur, Iowa, to Chicago, Ill., found not unreasonable, but unduly prejudicial. No damage shown to have resulted from the undue prejudice. Complaint dismissed.

John Andrew Ronan and John D. Collyer for complainant.

R. H. Widdicombe and W. Y. Wildman for defendant.

REPORT OF THE COMMISSION

DIVISION 3, COMMISSIONERS HALL, CAMPBELL, AND COX

BY DIVISION 3:

Exceptions were filed by defendant to the report proposed by the examiner. Our conclusions differ from those recommended by him.

Complainant is a corporation dealing in pop corn and manufacturing confectionery and candies at Chicago, Ill., and Brooklyn, N. Y., and operating pop-corn elevators and cribs at Arthur in Ida County, Iowa, and at Ord, Nebr. By complaint seasonably filed, as amended, it alleges that the rate of 30 cents assessed on pop corn, in carloads, shipped between March 20, 1921, and June 1, 1922, from Arthur to Chicago was unreasonable, unjustly discriminatory, and unduly prejudicial. Reparation only is sought. Rates are stated in cents per 100 pounds.

Sac and Ida, adjoining counties in Iowa, are said to produce 80 per cent of all the pop corn grown in this country, and 90 per cent

of their production moves to or through Chicago for distribution. Complainant's purchases are concentrated at Arthur for curing and shipment. Its chief competitors concentrate their supplies at Odebolt and Schaller, in Sac County, and defendant shows that during the period covered by the complaint the movement from Odebolt was approximately equal in volume to that from Arthur.

Complainant's shipments were in bulk in box cars. They approximated 72 carloads, averaging close to 76,000 pounds each. The prescribed carload minimum is 40,000 pounds. Loss and damage claims on this commodity are negligible.

From Sac Junction or Sacton, Iowa, one branch of defendant's line extends northwesterly to Sargent's Bluff, Iowa, and another continues westerly to Onawa, Iowa, both joining its Omaha-Sioux City line. The following table sets out applicable rates from stations on the two branches before, during, and after this movement, with their effective dates. All are commodity rates. Pop corn is rated fifth class in the western classification.

Station	Distance to Chicago	Aug. 26, 1920	Mar. 20, 1921	June 1, 1922
	<i>Miles</i>	<i>Cents</i>	<i>Cents</i>	<i>Cents</i>
Sargent's Bluff branch:				
Lake View.....	415	26.5	26.5	26.5
Sac City.....	424	26.5	26.5	26.5
Early.....	433	26.5	26.5	26.5
Schaller.....	441	29.5	29.5	28.5
Galva.....	447	34.5	34.5	28.5
Sargent's Bluff.....	507	36	36	33
Onawa branch:				
Wall Lake.....	413	29	28	26.5
Odebolt.....	422	34	28	26.5
Arthur.....	428	34.5	¹ 30	26.5
Ida Grove.....	435	36	32	27.5
Battle Creek.....	442	36	36	28.5
Danbury.....	450	36	36	28.5
Onawa.....	477	36	36	28.5

¹ Rate under review.

The fact that pop corn is produced in a comparatively small area and that it is distributed from three or four principal concentration points makes the rate relationships at these points a matter of primary importance. Prior to March 20, 1921, the rate from Arthur was 34.5 cents. No complaint was or is made that this rate was unreasonable. On that date the rate was reduced to 30 cents but the spread in the rates as between Odebolt and Arthur was increased from 0.5 cent to 2 cents. This increased advantage in favor of complainant's competitors at Odebolt occasioned a correspondence with defendant which resulted in an equalization of the rates on June 1, 1922, through reduction of both rates to 26.5 cents, and in this complaint seeking reparation. It is observed that although the readjustment of March 20, 1921, increased the spread as between

Odebolt and Arthur as stated, it resulted in counter benefits to complainant by reducing the prior 5-cent advantage to its competitor at Schaller to 0.5 cent, and by increasing its former advantage over Ida Grove from 1.5 cents to 2 cents. Effective July 1, 1922, the rate from Arthur and Odebolt was further reduced to 24 cents, and the rates from Schaller and Ida Grove became 25.5 and 25 cents, respectively. Complainant's witness stated at the hearing that it is satisfied with the present rates both as to level and grouping.

Complainant introduced little evidence bearing upon the unreasonableness of the rate assailed. Based on the average loading of 76,000 pounds that rate yielded earnings of 53.3 cents per car-mile and 14.2 mills per ton-mile for the haul of 428 miles. An exhibit introduced by complainant, as corrected, shows that, for the average distance of 432.7 miles, the average contemporaneous rate of 28.9 cents from eight other points in contiguous territory would yield earnings of 50.8 cents per car-mile and 13.3 mills per ton-mile. This comparison is of little probative force. It includes all of the points on these two branches from which rates lower than the rate assailed apply and only two points from which the rates are higher. A composite of the rates and distances from 21 points, taken from the exhibits of both parties, shows an average rate of 33.8 cents for an average distance of 453.3 miles, to yield 56.6 cents per car-mile and 14.9 mills per ton-mile. There is little, if any, movement of pop corn from points other than Arthur, Odebolt, Schaller, and Ida Grove.

Complainant refers to the contemporaneous rate of 26.5 cents from Early to Chicago for 433 miles as compared with the rate of 30 cents from Arthur to Chicago for 428 miles. There is no movement of pop corn from Early. Moreover, defendant shows that rates from stations on the Sargent's Bluff branch are subject to competitive influences not felt at points on the Onawa branch. The Minneapolis & St. Louis maintains a low rate on pop corn from Storm Lake, Iowa, a point about 20 miles north of Sac City, to Chicago. The Chicago, Milwaukee & St. Paul, which reaches Storm Lake over a branch line running through Sac City, meets this rate at Storm Lake. As a result the Storm Lake rate is held as a maximum from Sac City and has its influence on the rates from points immediately west of Sac City, such as Early and Schaller. The class rates from Early are generally lower than the corresponding class rates from Arthur.

Complainant also points to the fact that from Ord, Nebr., its other shipping point, the carriers maintain a rate on pop corn which is 4 cents per 100 pounds under the rate on flaxseed, whereas the rate assailed is on the flaxseed basis. Defendant contends that there is no analogy between these two commodities and that its inclusion of

pop corn in its flaxseed rate item is a mere matter of convenience in tariff construction. Defendant further shows that the pop-corn rate from Ord was 9 and 13 cents, respectively, higher than the corresponding rate on grain before and after January 1, 1922, but from Arthur the rate was 4.5 and 7.5 cents over the grain rate for the same periods. The rate assailed was 118 per cent of the rate effective prior to the 35 per cent increase authorized by us in *Increased Rates*, 1920, 58 I. C. C. 220. The present rate is 94 per cent of that rate.

We find that the rate assailed was not unreasonable but that it was unduly prejudicial to complainant and unduly preferential of its competitors at Odebolt to the extent that it exceeded the rate from the latter point. We further find that complainant is not shown to have been damaged as a direct result of the undue prejudice found. Effective June 1, 1922, the rates from Arthur and Odebolt were reduced to a common level, thus removing the undue prejudice, and no order for the future is necessary.

The complaint will be dismissed.

COMMISSIONER CAMPBELL dissents.

93 I. C. C.

No. 14509

BERGSTROM PAPER COMPANY v. DIRECTOR GENERAL,
AS AGENT

Submitted March 17, 1924. Decided November 25, 1924

Carload of clay from Langley, S. C., to Neenah, Wis., found to have been misrouted. Reparation awarded.

J. E. Bryan and A. A. Lutz for complainant.

Royal McKenna for defendant.

REPORT OF THE COMMISSION

DIVISION 3, COMMISSIONERS HALL, CAMPBELL, AND COX

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner. Our conclusions differ somewhat from those recommended by him. Complainant, a corporation manufacturing paper at Neenah, Wis., alleges that the rate charged on one carload of clay shipped December 11, 1918, from Langley, S. C., to Neenah was unreasonable. We are asked to award reparation. Rates will be stated in amounts per net ton.

The shipment, weighing 64,000 pounds, was delivered unrouted to the Southern. It moved over that road to Cincinnati, Ohio, the Cleveland, Cincinnati, Chicago & St. Louis to Coster, Ill., the Elgin, Joliet & Eastern to Leighton, Ill., and the Minneapolis, St. Paul & Sault Ste. Marie to destination. Charges were collected at the applicable rate of \$6.70. The measure of this rate is not attacked. Complainant's contention is that the shipment was misrouted.

The governing tariff named rates from Langley to Neenah based upon proportionals to and from Cincinnati. It provided for two sets of proportional rates beyond Cincinnati. The higher of the two applied over "all-rail routes," the lower was designated as a "rail-lake-and-rail" rate. The Pere Marquette and Grand Trunk were participants in the tariff. Both operate car ferries across Lake Michigan, the former from Ludington, Mich., to Milwaukee, Wis., and the latter from Grand Haven, Mich., to the same point. The rate charged included the all-rail proportional beyond Cincinnati, whereas substitution therefor of the rail-lake-and-rail proportional

beyond Cincinnati made a rate of \$6.30, to the basis of which reparation is sought.

If the lower rate of \$6.30 was applicable over the car-ferry route, it was the duty of the carriers, in the absence of instructions, to send the shipment over this route. The question, therefore, is whether the proportional rate beyond Cincinnati, published as a rail-lake-and-rail rate, was applicable over the car-ferry route. Strictly speaking, a car-ferry route is an "all-rail" route, and ordinarily the expression "rail-lake-and-rail route" is used to describe a rail-and-water break-bulk route. It is evident that the terms were not so used in the tariff under consideration. No steamship line was named as a participating carrier and accordingly the rail-lake-and-rail rate could have had no application over a rail-and-water break-bulk route. Considering the tariff as a whole it appears that the expression "rail-lake-and-rail" was used to describe the car-ferry routes and to distinguish them from the routes which were literally "all-rail."

We find that the shipment was made as described and that it was misrouted; that complainant paid and bore the charges thereon; and that it was damaged and is entitled to reparation in the sum of \$12.80 with interest, which is the difference between the charges paid and those which would have accrued at a rate of \$6.30 per ton of 2,000 pounds. An order will be entered awarding reparation.

93 I. C. C.

No. 14684

LOUISVILLE COOPERAGE COMPANY v. LOUISVILLE &
NASHVILLE RAILROAD COMPANY ET AL.

Submitted May 2, 1924. Decided November 25, 1924

Rate on rough staves and headings, in carloads, from Bonita, La., to Louisville, Ky, found not unreasonable or otherwise unlawful. Complaint dismissed.

A. F. Vandegrift for complainant.

H. H. Larimore and *G. W. Holmes* for defendants.

REPORT OF THE COMMISSION

DIVISION 3, COMMISSIONERS HALL, CAMPBELL, AND COX

BY DIVISION 3:

Exceptions were filed by defendants to the report proposed by the examiner. Our conclusions differ from those recommended by him.

Complainant, a corporation, manufactures barrels at Louisville, Ky. By complaint filed February 12, 1923, it alleges that the rate of 39.5 cents collected on 87 carloads of rough oak and gum staves and headings shipped between April 1 and October 31, 1921, from Bonita, La., to Louisville was unreasonable, unjustly discriminatory, unduly prejudicial, and in violation of the long-and-short-haul provision of the fourth section. Reparation is sought to the basis of the subsequently established rate of 34.5 cents. Rates are stated in cents per 100 pounds.

Bonita is a local station on the Missouri Pacific, 221 miles southwest of Memphis, Tenn., and about 40 miles north of Monroe and Rayville, La., junction points between the Missouri Pacific and the Vicksburg, Shreveport & Pacific. The shipments moved over the Missouri Pacific to Memphis and the Louisville & Nashville beyond, a distance of 601 miles. Charges were collected at the applicable rate of 39.5 cents constructed by application of the rule provided in Kelly's I. C. C. No. U. S. 1 to the combination of intermediate commodity rates to and from Memphis.

The evidence submitted in support of complainant's allegations consisted mainly of comparisons of the ton-mile yield of 13.1 mills, returned by the rate assailed, with the ton-mile earnings under the group rate of 34.5 cents contemporaneously in effect to Louisville from various points in Arkansas and Louisiana on the lines of car-

riers other than the Missouri Pacific. This group rate, applicable on lumber, staves, and headings, was blanketed over a wide area. As published by the Missouri Pacific it applied only from the junction points of Monroe and Rayville, was protected by an appropriate fourth-section application, and was restricted to yellow-pine and cypress lumber. Complainant's allegation of a fourth-section violation based upon the 34.5-cent rate from Monroe is, therefore, not sustained. The only other evidence submitted by complainant consisted of an exhibit showing group rates of 30 cents on forest products from Louisville & Nashville stations in Mississippi, Alabama, and Florida to Louisville for distances from 600 to 780 miles; and of rates of 32.5 to 35.5 cents from points in Florida on the Atlanta & St. Andrews Bay and the Apalachicola Northern to Louisville for distances from 730 to 850 miles.

A witness for the Missouri Pacific stated that it did not publish the 34.5-cent rate from local points because of the low revenues returned thereunder, and that the rate from Monroe and Rayville was compelled by the competition of the Vicksburg, Shreveport & Pacific and its connections via Vicksburg, Miss. This witness called attention to the fact that many of the points selected by complainant for comparison are on the outermost edge of the 34.5-cent rate blanket, and that the distances on which the ton-mile earnings were computed are those for movements over the longer routes.

The evidence is insufficient to justify a finding in favor of complainant. We have frequently pointed out that comparisons based upon distance alone have little probative value. This is particularly true where the rates compared are group rates in the establishment of which the element of distance must be subordinated to other considerations. The fact, therefore, that the Missouri Pacific did not participate in these group rates does not prove that the 39.5-cent rate charged was unreasonable, nor is that conclusion warranted from the further fact that the Missouri Pacific subsequently established the 34.5-cent rate from Bonita to Louisville. Counsel for complainant stresses the delay which occurred between the time of complainant's written request under date of January 18, 1921, for the establishment of a "through rate" from Bonita to Louisville and the date of the establishment of the joint rate on October 31, 1921, but this does not entitle complainant to reparation on its shipments which moved during the interval. The delay appears to have been due in part to a consideration of the question whether a probable increase in traffic would offset the loss in revenue consequent upon the establishment of the 34.5-cent group rate from Bonita and other local stations on the Missouri Pacific in the vicinity thereof to Louisville and other Ohio River crossings, and in part to the question

of divisions between the Missouri Pacific and its connections. Moreover, it appears that the rate requested in complainant's letter of January 18, 1921, was 38 cents.

The record is devoid of evidence of unjust discrimination; and it does not follow from the fact that the 34.5-cent rate was in effect on yellow-pine and cypress lumber from the junction points, Monroe and Rayville, that complainant was unduly prejudiced thereby in its shipment of oak and gum staves and headings from Bonita.

We find that the rate assailed was not unreasonable or otherwise unlawful. The complaint will be dismissed.

CAMPBELL, *Commissioner*, dissenting:

The group rate of 34.5 cents sought applied from points as far south as Alexandria, 791 miles, yielding 8.7 mills per ton-mile, as compared with the assailed rate of 39 cents, 601 miles, 13.1 mills from Bonita. The rate sought would have yielded 11.4 mills. The rate of 30 cents from points in Mississippi, Alabama, and Florida yielded average earnings of 8.8 mills for an average distance of 681 miles. Defendants offered no rate comparisons. My opinion is that the assailed rate was unreasonable to the extent that it exceeded the group rate of 34.5 cents.

93 I. C. C.

No. 15107

HANSEN-PETERSON COMPANY ET AL. *v.* ATCHISON,
TOPEKA & SANTA FE RAILWAY COMPANY ET AL.

Submitted April 14, 1924. Decided November 25, 1924

Rates on oranges, in carloads, from points in California to Virginia, Minn., found unreasonable. Reasonable rates prescribed for the future. Reparation awarded.

O. W. Tong for complainants.

R. J. Hagman, P. B. Beidelman, and W. Hately for defendants.

REPORT OF THE COMMISSION

DIVISION 3, COMMISSIONERS HALL, CAMPBELL, AND COX

By DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainants are W. H. Peterson, trading as W. H. Peterson Fruit Company until May 1, 1921, W. H. Peterson, E. C. Peterson, and A. J. Hansen, copartners, trading as W. H. Peterson Fruit Company from May 1 to July 17, 1921, inclusive, and the Hansen-Peterson Company, a corporation, dealing in fruits and vegetables at Virginia, Minn. They allege by complaint seasonably filed that the rates and refrigeration charges assessed on 13 carloads of oranges shipped from California points to Virginia during 1921 and 1922 were unreasonable and illegal, in violation of sections 1, 6, and the long-and-short-haul provision of section 4 of the interstate commerce act. We are asked to prescribe reasonable rates for the future and to award reparation. Rates will be stated in amounts per 100 pounds.

The shipments averaged 34,536 pounds, moved via Missouri River gateways and Duluth, Minn., and were delivered by the Duluth, Winnipeg & Pacific. During 1921 a blanket rate of \$1.92 on oranges in carloads, was applicable from California points to the territory between the Missouri River and the Atlantic seaboard. On and after January 1, 1922, it was \$1.73. But these rates did not apply to points on the roads traversing the iron ranges in northern Minnesota, including Virginia, and the rates charged on these shipments, \$2.21 and \$1.99, respectively, were combinations of the blanket rate to Duluth and the third-class rate for the 78 miles beyond. The latter component was 29 cents during 1921 and 26 cents during 1922.

Complainants show that Houghton, Mich., approximately 250 miles east of Duluth, through which shipments to Houghton move, is accorded the blanket rate; also that Minot, N. Dak., 465 miles northwest of Minneapolis, is accorded this rate over routes via the Twin Cities. Virginia is 224 miles from Minneapolis.

On and after April 7, 1921, the blanket all-rail rate of \$1.665 on lemons from California applied to Virginia. It was reduced to \$1.50 on January 1, 1922. The item carrying this rate named rates on both oranges and lemons to various other northwestern destinations, but not on oranges to Virginia. The tariff contained a provision for rates to intermediate points reading as follows:

* * * the rate to an unnamed point located between any two points to which rates are named in the tariff will be the same as the rate to the higher rated points between which such unnamed point is located, * * * notwithstanding such unnamed point may be named in either class or commodity items.

Complainants contend that under this provision Virginia was an unnamed point with respect to rates on oranges and that the Winnipeg, Manitoba, rates, which were \$2.085 in 1921 and \$1.875 in 1922, should have applied as maxima. They urge that points just north of Virginia, not named in the tariff, such as Cusson, Minn., would have taken the Winnipeg rate as maximum under the above-named provision and that it was violative of the long-and-short-haul clause to apply a greater rate to Virginia. Defendants state that citrus fruits have never moved to Winnipeg via Duluth and that the Winnipeg rate was not intended to serve as a maximum to intermediate points over the route of movement. It is said to have been due to a tariff technicality that this route was open during this period. Ordinarily, traffic from the Pacific coast to Winnipeg moves over more direct routes. The rate via Duluth was canceled on August 25, 1923, by the Duluth, Winnipeg & Pacific. Complainants' contentions in this respect are correct.

The western boundary of transcontinental Group F territory follows the Northern Pacific from Duluth south to Hinckley, Minn., thence the Great Northern to the Twin Cities and the Chicago, St. Paul, Minneapolis & Omaha south to Omaha. Formerly the group rates did not apply west of this line, but as shipments of Pacific coast fruits to near-by western points increased and more favorable rates were sought, numbered groups were created embracing Minnesota, Dakota, Ontario, and Manitoba points. Some took the blanket rates and others carried higher rates. But to points on the northern Minnesota iron ranges the rates have been applied on the basis of the group rate to Duluth and full third-class rates beyond. Request for lower class and commodity rates generally to these

points was made early in 1922, but was denied by the transcontinental lines. Formal complaints were then filed by the city of Virginia and certain business interests. These complaints are covered by our report in *Virginia Chamber of Commerce v. A., T. & S. F. Ry. Co.*, 92 I. C. C. 722. We there found that the rates from California points to Virginia on numerous commodities, including oranges, "are, and for the future will be, unreasonable and unduly prejudicial to the extent that they exceed or may exceed the rates contemporaneously maintained on like traffic from the same points to Duluth." The Duluth, Winnipeg & Pacific, for some reason which did not appear of record, was not there made a party defendant.

Defendants are now willing to extend the blanket rate on oranges to so-called Group 5 points, which are Virginia, Chisholm, and Hibbing, Minn., as was done on lemons on August 28, 1913, following *Arlington Heights Fruit Exchange v. S. P. Co.*, 22 I. C. C. 149. This will satisfy the complaint with respect to rates for the future.

But on the question of reparation defendants urge that the earnings under the assessed rates were not unreasonable. For the haul of approximately 2,440 miles they yielded car-mile earnings based upon the average loading of 31 and 28 cents and ton-mile earnings of 18.1 and 16.3 mills, prior to and on and after January 1, 1922. The application of the third-class component from Duluth made the earnings somewhat greater than for equidistant hauls to points taking the blanket rate. To no other points than those on these iron ranges were through rates applied in this manner. The earnings on complainants' shipments under the blanket rates of \$1.92 and \$1.73 would have been 27.2 and 25.7 cents and 15.7 and 14.2 mills, respectively.

We find that the rates assailed were illegal and resulted in overcharges to the extent that they exceeded the Winnipeg rates; that the applicable rates were unreasonable to the extent that they exceeded the transcontinental Group F rates; that complainants made the shipments as described and paid and bore the charges thereon; that they have been damaged in the amount of the difference between the charges paid and those which would have accrued at the rates found reasonable; and that they are entitled to reparation, with interest. Complainants should comply with Rule V of the Rules of Practice. As the complaint has been satisfied with respect to the rates for the future, no order is necessary.

The record is inadequate to afford a finding as to the correctness of the refrigeration charges, but the parties express their readiness to adjust any such errors in the Rule V statement. This plan may be followed.

No. 15388

PIONEER PEARL BUTTON COMPANY v. ST. LOUIS-SAN
FRANCISCO RAILWAY COMPANY ET AL.

Submitted October 6, 1924. Decided November 25, 1924

Rates on mussel shells, in carloads, shipped from Marked Tree, Pocahontas, and Clarendon, Ark., to Oswego, Kans., found unreasonable. Reparation awarded.

F. C. Marzolph for complainant.

B. E. Thomas for defendants.

REPORT OF THE COMMISSION

DIVISION 3, COMMISSIONERS HALL, CAMPBELL, AND COX

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant, a corporation manufacturing buttons, with principal offices at Poughkeepsie, N. Y., and a branch factory at Oswego, Kans., alleges by complaint seasonably filed, that the rates charged on six carloads of mussel shells shipped during April, July, August, and September, 1922, from Marked Tree, Pocahontas, and Clarendon, Ark., to Oswego were unreasonable. Reparation only is sought. Rates are stated in cents per 100 pounds.

The points of origin and destination, located in northeastern Arkansas and southeastern Kansas, respectively, are on the St. Louis-San Francisco, except that Clarendon is on the St. Louis Southwestern. The four cars from Clarendon weighed 251,500 pounds, the one from Marked Tree 85,400 pounds, and that from Pocahontas 49,700 pounds, an average of 64,433 pounds. Mussel shells, crushed, minimum 36,000 pounds, or not crushed, minimum 40,000 pounds, are rated class E, in the western classification. The shipments moved over defendants' lines as routed and charges were collected at the applicable class E rates of 44.5 cents from Pocahontas, 36.5 cents from Marked Tree, and 40 cents from Clarendon, except that on one car from the latter point a rate of 43 cents, based on the St. Louis combination, was erroneously assessed. The resulting overcharge of \$23.28 has been refunded.

Complainant's plant at Oswego was established during the latter part of 1921, and late in February of 1922 request was made of

defendants to establish commodity rates between the points in issue. A witness for defendants testified that in March, 1922, they docketed for consideration by the southwestern lines committee a proposal to establish a rate of 27 cents. This figure was suggested because complainant had asked for the same rate that applied on crushed shells, and at that time the rate on the latter commodity from Newport, Ark., to Iola, Kans., points of origin and destination in close proximity to the points in issue, was 27 cents. Effective October 26, 1922, after the shipments had moved, and subsequent to the general reductions of July 1 of that year, defendants established commodity rates of 24.5 cents from Pocahontas and 26 cents from Marked Tree and Clarendon, minimum 50,000 pounds, and these rates are still in effect. If the present basis had been established prior to July 1, 1922, the rates would then have been 27 cents from Pocahontas and 29 cents from the other two points. Only the shipment from Pocahontas moved prior to the date last named. Complainant seeks reparation to the basis of 27 cents on that shipment, and 26 cents on the shipments from Marked Tree and Clarendon.

Complainant contends that commodity rates are generally maintained between points where there is a movement of clam and mussel shells and instances numerous commodity rates contemporaneously maintained by defendants, both from and to points in the same general origin and destination territory and from the points of origin here considered to various destinations in official and western classification territories, for equal or greater distances, which are the same as or lower than the rates sought and yielded lower earnings than those under the latter rates. Oswego is located on one of the main lines of the Frisco and generally takes Kansas City rates on traffic from the Southwest. Because of the lack of movement, there being no plant at Oswego at the time, commodity rates were not requested or established between the points here considered when such rates were made effective to the other points instanced by complainants. Defendants maintained commodity rates of 37 cents and 33.5 cents prior to and on and after July 1, 1922, respectively, from Texas common points and the Dallas-Fort Worth group to Kansas City territory; also rates of 36.5 cents and 33 cents during the same periods to Chicago from numerous points in Arkansas, including the three here considered. The average short-line distance to Chicago from these three points is approximately 565 miles, and the present rate of 33 cents would yield ton-mile earnings of 11.7 mills. The rates charged produced ton-mile revenue of 26.6, 19.9, and 18.6 mills from Pocahontas, Marked Tree, and Clarendon, respectively, an average of 21.7 mills. Based upon the average distance of 378 miles and revenue per

car of \$258.22 the car-mile earnings were 70 cents. A rate of 26 cents would yield average ton-mile and car-mile earnings of 14 mills and 44 cents, respectively.

Defendants' evidence is for the most part general in character. They consider that the class rates charged were reasonable and take the position that whole shells used in making buttons must necessarily be of a higher grade and value and might properly take a higher rate than crushed shells. The latter is a waste product used principally for mixing with poultry feed, which can be made with broken or imperfect shells. This lays emphasis on the use made of an article, a basis upon which we have repeatedly refused to sanction different rates. None of defendants' tariffs makes any distinction between whole or crushed clam or mussel shells. The rate comparisons submitted by defendants are not convincing, especially in view of the rates applicable to the same commodity from and to numerous points of origin and destination in the same general territory which had been established prior to the movement of these shipments, and taking into consideration the fact that commodity rates were requested by complainant approximately 60 days prior to the movement of the first shipment and were subsequently established. Mussel and clam shells are rated sixth class in official classification, and under the C. F. A. class scale the present sixth-class rates for 335, 369, and 431 miles, the distances between the points considered, are 24, 25, and 26.5 cents, respectively. These shells load heavily, are not easily damaged, and can be shipped in either gondola or box cars.

We find that the rates assailed were unreasonable to the extent that they exceeded 27 cents, minimum 50,000 pounds, from Pocahontas and 26 cents, minimum 50,000 pounds, from Marked Tree and Clarendon; that complainant made the shipments as described and paid and bore the charges thereon; that it was damaged thereby in the amount of the difference between the charges paid and those which would have accrued at the rates herein found reasonable; and that it is entitled to reparation in the sum of \$527.94 with interest.

An appropriate order will be entered.

93 I. C. C.

No. 14254¹TRAFFIC BUREAU, CHAMBER OF COMMERCE, LA CROSSE, WIS., ET AL. *v.* DIRECTOR GENERAL, AS AGENT, BALTIMORE & OHIO RAILROAD COMPANY, ET AL.

Submitted May 31, 1923. Decided November 25, 1924

Rates on empty returned beer packages, in carloads and less than carloads, from eastern points to La Crosse, Wis., during the period of Federal control, found unreasonable to the extent that they exceeded the aggregate of the intermediate rates. Reparation awarded.

W. W. West for complainants.

John F. Finerty and *John C. Brooke* for Director General of Railroads, as agent.

REPORT OF THE COMMISSION

DIVISION 3, COMMISSIONERS HALL, CAMPBELL, AND COX

BY DIVISION 3:

Exceptions were filed by the Director General of Railroads, hereinafter called defendant, to the report proposed by the examiner.

The Chamber of Commerce, La Crosse, Wis., is an association of persons, firms, and corporations. Among its members are the John Gund Brewing Company and the G. Heileman Brewing Company, corporations hereinafter called complainants. It is alleged by complaints seasonably filed that the rates charged for the transportation of empty returned beer packages from various points in West Virginia, Virginia, New York, Pennsylvania, Ohio, Kentucky, Indiana, Michigan, and from Washington, D. C., to La Crosse, Wis., during the period of Federal control were unjust and unreasonable and also in violation of section 4 of the act. Reparation is sought. Rates will be stated in cents per 100 pounds.

The shipments, consisting of kegs and of bottles in barrels or boxes, moved in carloads and less than carloads from various points in the States named to La Crosse. Charges were assessed at the applicable joint fifth-class rates on carloads, and rule 25 on less than carloads, governed by the official classification.

From Burnsville, Richwood, Buckhannon, Elkins, and Coalton, W. Va., there were no joint class rates to La Crosse, and the combinations on Chicago, Ill., applied. From all other points of origin

¹ This report also embraces No. 14265 and No. 14266, Same *v.* Same.

named in the complaint joint class rates applied to La Crosse which were higher than the combination of fifth-class rates on carloads and rule 25 on less than carloads to Chicago and one-half of fourth class, any quantity, beyond. For example, the joint carload rate from Grafton, W. Va., on June 25, 1918, was 49 cents and the Chicago combination was 44 cents, made up of 29.5 cents to Chicago and 14.5 cents beyond. Complainants contend that the joint rates were unjust and unreasonable to the extent that they exceeded the aggregate of intermediate rates based on Chicago. From most of these points of origin rates are now constructed on the Chicago combination of fifth-class on carloads and rule 25 on less than carloads to Chicago and one-half of fourth class, any quantity, beyond. By exceptions to the western classification a rating of one-half of fourth class, any quantity, has been in effect on empty returned beer packages in western territory for many years.

Joint rates which exceed the aggregates of the intermediate rates are prima facie unreasonable, and the question is whether the evidence in this case affords a satisfactory rebuttal of the presumption.

Defendant takes the position that, notwithstanding this presumption, the joint rates assailed were not unreasonable and urges in support of it that these rates were even lower than those prescribed by us in *The Wisconsin Rate Cases*, 44 I. C. C. 602. In that proceeding we prescribed class rates from New York, N. Y., to La Crosse to be constructed on the basis of 145 per cent of the New York-Chicago rates, and provided that the rates from other points in trunk-line territory and points in New England territory to La Crosse should bear the same relationship to the rates prescribed from New York as the class rates from these points had theretofore borne to the class rates from New York. Class rates from central territory to La Crosse were required to be adjusted in proper relation to the rates from trunk-line territory. Subsequent to our decision in that case, and prior to the effective date of our order therein, an increase in the New York-Chicago rates to a scale of 90 cents first class was authorized in *The Fifteen Per Cent Case*, 45 I. C. C. 303. As 145 per cent of that scale would have resulted in slightly higher rates, as, for example, 0.5 cent first class, to La Crosse than to St. Paul, Minn., a farther distant point, the carriers observed the St. Paul rates as maxima at La Crosse. In *La Crosse Chamber of Commerce v. A. A. R. R. Co.*, 61 I. C. C. 289, we observed that in *The Wisconsin Rate Cases*, *supra*, we intended to create a spread, La Crosse under St. Paul, of 4.5 cents first class, but that owing to the subsequent increase in the New York-Chicago rate the method prescribed, as the mechanics of effecting the intended adjustment, was not apt for the purpose. We accordingly required the La Crosse

rates to be reduced so as to accord with the adjustment originally intended and found appropriate. Clearly defendant's contention in this respect is without merit.

Defendant shows that the fourth-class rates on June 24, 1918, and June 25, 1918, were slightly lower for the distance of 263 miles from Chicago to La Crosse than the fourth-class rate for that distance prescribed for application in central territory in *C. F. A. Class Scale Case*, 45 I. C. C. 254. This situation did not obtain prior to the increase in the latter rates authorized in *The Fifteen Per Cent Case*, *supra*. Furthermore, on traffic originating in the East the fourth-class rate from Chicago to La Crosse might properly be somewhat lower than for local application between the same points, and, as shown in the report in *The Wisconsin Rate Cases*, *supra*, the fourth-class proportional rate from Chicago to La Crosse used in constructing joint rates from the East was materially lower than the fourth-class rate under the C. F. A. scale for that distance.

Defendant compares the rate of one-half of fourth class with the rating in the western classification on various other empty returned containers. Many of these articles are rated one-half of fourth class under exceptions to the classification.

We find that the rates assailed were unreasonable to the extent that they exceeded the aggregates of the intermediate rates to and from Chicago, composed of fifth-class rates on shipments, in carloads, and rule 25 rates on shipments in less than carloads, to Chicago, and one-half of fourth-class rates, any quantity, beyond. We further find that complainants, John Gund Brewing Company and G. Heileman Brewing Company, made shipments as described and paid and bore the charges thereon at the rates herein found unreasonable; that they have been damaged thereby in the amount of the difference between the charges paid and those which would have accrued at the rates herein found reasonable; and that they are entitled to reparation, with interest. These complainants should comply with Rule V of the Rules of Practice.

HALL, *Chairman*, concurring in part:

I concur except in the findings as to complainant G. Heileman Brewing Company. It is not established by competent evidence that this complainant paid and bore the charges at the rates found unreasonable, or was otherwise injured. That being so, we can not find that it was damaged or award it reparation.

No. 14527

OKLAHOMA PORTLAND CEMENT COMPANY v. ABILENE
& SOUTHERN RAILWAY COMPANY ET AL.

Submitted September 12, 1923. Decided November 25, 1924

Rates on empty returned cement bags and sacks from Texas points to Ada, Okla., found unreasonable and unduly prejudicial. Reasonable basis prescribed.

E. W. Martindell and *Benedict & Phelps* for complainant.

J. M. Stupper, *P. E. Bock*, and *F. W. Myers* for defendants.

No appearance for interveners.

REPORT OF THE COMMISSION

DIVISION 3, COMMISSIONERS HALL, CAMPBELL, AND COX

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant, a corporation, manufactures cement at Ada, Okla., and has its principal place of business in Denver, Colo. By complaint filed December 4, 1922, it alleges that it ships cement in bags or sacks from Ada to points in Texas; that when the bags or sacks are returned defendants charge for the transportation thereof the full fourth-class rates; that it meets competition in Texas from mills producing cement at certain Texas points; that the rate on empty returned cement bags and sacks within the State of Texas is one-half of the fourth-class rate; that the rates on empty returned cement bags and sacks from points in Texas to Ada are unjust and unreasonable and as compared with rates for like transportation wholly within the State of Texas, subject complainant and its traffic to undue prejudice and disadvantage. Reasonable and non-prejudicial rates for the future are asked.

The Southwestern Portland Cement Company, of El Paso, the Texas Portland Cement Company, with mills at Dallas, Houston, and Harrys, and the Trinity Portland Cement Company of Eagle Ford, all operating in the State of Texas, intervened.

For the transportation of empty, used, cotton cement bags or sacks, in less-than-carload lots, when baled in accordance with rules not here in issue, the governing western classification provides a

fourth-class rating. By exceptions to the classification defendants accord a rating of one-half of fourth-class on the same articles moving entirely within the State of Texas, or from the Shreveport group in Louisiana to points in Texas. Similar exceptions are in force on intrastate traffic in Oklahoma, Kansas, Missouri, and Iowa, but no such exceptions apply on interstate traffic except from the Shreveport group to Texas.

Defendants offered no defense for this situation. Apparently the exceptions in favor of intrastate traffic were voluntarily made. Defendants maintain exceptions to the classification for other empty returned containers in less-than-carload lots and apply one-half of the fourth-class rate on both interstate and intrastate movements of bottles, in barrels or cases; cooperage; cases, without bottles; drums, iron; barrels, iron or wooden; cable reels; cracker cans, crates, and cases; acid carboys; oyster carriers; and lard tierces and tubs.

Bags or sacks in which cement is shipped are charged against the purchaser. When emptied, baled, and returned to the cement mill the purchaser is credited therewith, the mill absorbing the return freight charges. Bags or sacks are seldom lost or damaged in transit and the insurance risk is low. They require little care in transportation. No reason has been suggested for rating them higher for interstate than for intrastate transportation in the same general territory.

The distance scale of class rates between points in Texas and points in Oklahoma is the same as that between points in Texas. Ada is served by the Atchison, Topeka & Santa Fe, the Missouri-Kansas-Texas, and the St. Louis-San Francisco, whose lines extend into Texas. Over two of these lines Ada is less than 100 miles from the Texas border.

We find that the rates charged complainant on empty returned cement bags and sacks from points in Texas to Ada, Okla., were, are and for the future will be unreasonable and unduly prejudicial to the extent that they exceeded, exceed, or may exceed one-half of the corresponding fourth-class rates.

An appropriate order will be entered.

No. 14551

LAURA NELSON-KIRKWOOD, TRUSTEE FOR WILLIAM
R. NELSON ESTATE, v. CHICAGO, MILWAUKEE & ST.
PAUL RAILWAY COMPANY

Submitted November 7, 1923. Decided November 25, 1924

Rate on returned paper-winding cores, in carloads, from Kansas City, Mo., to Wisconsin Rapids, Wis., found unreasonable. Reparation awarded.

J. H. Tedrow for complainant.

O. T. Cull for defendant.

REPORT OF THE COMMISSION

DIVISION 3, COMMISSIONERS HALL, CAMPBELL, AND COX

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant, as trustee for the William R. Nelson estate, publishes a newspaper at Kansas City, Mo. By complaint filed December 15, 1922, she alleges that the rate charged on 23 carload shipments of paper-winding cores from Kansas City to Wisconsin Rapids, formerly Grand Rapids, Wis., between April 27, 1921, and February 1, 1922, was unreasonable, unjustly discriminatory, and unduly prejudicial. We are asked to award reparation. Rates will be stated in cents per 100 pounds.

Paper-winding cores are metal centers on which newsprint paper is wound. They are made in three lengths, $69\frac{3}{8}$, $52\frac{1}{8}$, and $34\frac{1}{2}$ inches, are about 4 inches in diameter, and resemble pieces of iron pipe. Complainant's shipments, aggregating 1,235,407 pounds, consisted of cores returned to the mill point at which the paper originated. The entire movement of 624 miles was over the Chicago, Milwaukee & St. Paul. Charges were collected at the applicable fifth-class rate of 46 cents. Contemporaneously the rate on newsprint paper between Kansas City and Wisconsin Rapids was 34 cents. Effective February 1, 1922, defendant provided in its tariff that the rate on cores returned to the mill point from which originally shipped wound with paper would not exceed the rate on newsprint paper in the reverse direction.

Complainant contends and defendant admits that the rate assailed was unreasonable to the extent that it exceeded 34 cents. She in-

stances rates lower than that charged contemporaneously in effect from Kansas City to Wisconsin Rapids on various commodities, including rates of 39 cents on iron pipe and fittings, 25.5 cents on scrap iron, 31 cents on old bottles and bottle carriers, and 37 cents on old steel barrels, scrap leather, and worn-out tires. The rate charged yielded ton-mile earnings of 14.7 mills and average car-mile earnings of 39.6 cents. The earnings under a rate of 34 cents would have been 10.9 mills per ton-mile and 29.2 cents per car-mile.

The record does not support the allegations of unjust discrimination and undue prejudice.

We find that the rate assailed was unreasonable to the extent that it exceeded 34 cents per 100 pounds; that complainant as trustee for the William R. Nelson estate made the shipments as described and paid and bore the charges thereon; that she has been damaged in the amount of the difference between the charges paid and those which would have accrued at a rate of 34 cents; and that as trustee she is entitled to reparation in the sum of \$1,482.49, with interest.

An appropriate order will be entered.

93 I. C. C.

No. 12681

IN RE CHARGES FOR WHARFAGE, HANDLING, STORAGE, AND OTHER ACCESSORIAL SERVICES AT SOUTH ATLANTIC AND GULF PORTS

Submitted April 16, 1923. Decided December 9, 1924

1. The scope of this proceeding enlarged to include all Atlantic and Gulf ports instead of south Atlantic and Gulf ports as at present.
2. Combined wharfage and handling charge on kerosene, in cases, at New Orleans, La., found unreasonable.

John Nicolson for United States Shipping Board.

J. C. Oakes, F. W. Altstaetter, E. J. Dent, M. P. Fox, G. R. Young, Wm. C. Lemen, Earl North, L. M. Adams, and A. P. Van Deesten for United States War Department.

Frank W. Gwathmey for Seaboard Air Line Railway Company, Atlantic Coast Line Railroad Company, and Central of Georgia Railway Company; *W. N. McGehee* for Southern Railway Company, Mobile & Ohio Railroad Company, and affiliated lines; *Lucien H. Cocke* and *D. Lynch Younger* for Norfolk & Western Railway Company; *J. F. Dalton* for Norfolk Southern Railroad Company; *C. W. Brosius* for Texas & Pacific Railway Company and *J. L. Lancaster* and *C. L. Wallace*, receivers, Missouri Pacific Railroad Company and Trans-Mississippi Terminal Company; *O. E. Lowry* for Chesapeake & Ohio Railway Company; *Ewen Davidson* for Charleston Terminal Company; *Wm. Berger* for Louisville & Nashville Railroad Company; *R. V. Fletcher, A. P. Humburg, and W. M. Rhett* for Illinois Central Railroad Company and Yazoo & Mississippi Valley Railroad Company; *Victor Leovy* and *W. H. Stakelum* for Southern Pacific lines in Louisiana; *J. N. Campbell* for Louisiana Railway & Navigation Company; *R. C. Fulbright* and *Wm. Graves* for Galveston Wharf Company; *G. B. Ross* and *J. S. Hershey* for Gulf, Colorado & Santa Fe Railway Company, *Horace Booth* for International & Great Northern Railway Company and *James A. Baker*, receiver; *H. G. Muckley, F. H. Moore, J. L. Hamilton, and G. P. Williams* for Kansas City Southern Railway Company, Texarkana & Fort Smith Railway Company, and Port Arthur Canal & Dock Company; *Fred H. Wood, J. R. Bell, and L. F. Das-pit* for Southern Pacific Company, Galveston, Harrisburg & San

Antonio Railway Company, and Southern Pacific Terminal Company; *E. A. Bynum* and *E. C. Guion* for Texas City Terminal Railway Company; *A. T. Witcher* for Missouri, Kansas & Texas Railway of Texas and *C. E. Schaff*, receiver; and *Chas. D. Drayton* for Gulf & Ship Island Railroad Company.

Chas E. Cotterill for Carson Naval Stores Company, *A. L. Chapeau*, Columbia Naval Stores Company, Consolidated Naval Stores Company and others. *Harvey M. Dickson* for National Lumber Exporters Association; *R. W. Dietrich* for Traffic & Transportation Bureau of New Orleans Association of Commerce; *Thomas J. Burke* for Charleston Traffic Bureau; *Samuel G. Spear* for Terminal Wharf & Railroad Warehouse Company and American Warehousemen's Association; *Gerrish Gassaway* for Newport News Chamber of Commerce; *Arthur P. Jones* for Norfolk Warehousemen's Association; *John P. Grace* for City of Charleston; *J. S. Farish* for Georgia-Florida Saw Mill Association, Incorporated, and Southern Crate Manufacturers' Association; *George S. Lovejoy*, *Clinton Robb*, and *Chester B. Carruth* for American Warehousemen's Association; *Charles O. Haines* for Seaboard Wharf & Warehouse Company; *William Holmes Davis* and *U. Dickmann* for Hampton Roads Maritime Exchange; *Frank S. Davis* for Boston Chamber of Commerce and Maritime Association of Boston Chamber of Commerce; *Karl Knox Gartner* and *A. G. King* for Port Commission of Norfolk; *A. J. Young* for International Agricultural Corporation; *David H. Scott* for Wilmington Compress & Warehouse Company; *J. M. Whitsitt* and *J. A. Von Dohlen* for Carolina Line; *N. P. Barnwell* for Charleston Port Terminals; *Thomas E. Grady* and *E. B. Gaines* for Savannah Traffic Bureau; *C. W. Bridger* for Southern Cotton Oil Company; *George H. Baldwin* for Commodore Point Terminal Company; *W. D. Nelson* for Jacksonville Traffic Bureau; *W. M. Mason* for Mason Forwarding Company; *G. L. Moore* for Jacksonville Wholesale Lumbermen's Association; *C. S. Hoskins* for Tampa Board of Trade; *W. E. Gardner* for Southern Pine Association; *A. W. D. Hall* for Tampa City Commission; *J. A. Banks* for Jacksonville Municipal Docks & Terminal; *W. A. Schumacher*, *C. M. Wynns*, *C. R. Marshall*, and *Charles E. Bell* for Fruit Dispatch Company, Vaccaro Brothers & Company, Cuyamel Fruit & Steamship Company, and Bluefield Fruit & Steamship Company; *B. R. Shepherd* for Chattanooga Sewer Pipe Works; *Horace Turner* for Turner Terminal Company; *R. G. Cobb* for Traffic Bureau & Chamber of Commerce of Mobile; *R. V. Taylor* for Municipality of Mobile; and *Wm. H. Ambrecht* for Alabama State Harbor Commission.

R. A. Christian for Louisiana State Harbor Commission; *V. S. Hurlburt* for Maritime Branch, Chamber of Commerce of Mobile; *Carl Giessow*, *Edgar Moulton*, and *Harry Y. Taylor* for New Orleans Joint Traffic Bureau; *C. E. Dobson* for Southern Lumber Exporters' Association; *R. J. Wilkinson* for Mexican Petroleum Corporation of Louisiana; *C. A. Talley* for New Orleans Refining Company, Incorporated; *E. W. Weigand* for New Orleans Publicly Licensed Warehouses; *C. A. Torrance* for New Orleans Steamship Association; *H. H. Haines*, *B. C. Allin*, and *L. M. Hogsett* for Houston Harbor Board and City of Houston; *L. M. Shepardson* for Orange Chamber of Commerce and Orange Wharf and Dock Commission; *W. E. Lea* for City of Orange; *E. H. Thornton* and *E. B. Cummins* for Galveston Commercial Association; *Charles A. Bland* for Beaumont Chamber of Commerce and Beaumont Dock and Wharf Commission; *B. C. LeBaron* for Beaumont Dock and Wharf Commission; *F. R. Dalzell* for Houston Cotton Exchange; *Charles Crotty* and *R. J. Scott* for City of Houston, Harbor Department; *S. L. Boyd* for American Agricultural Chemical Company; *Horace Pearsall* for Pearsall & Company; *J. G. McCormick* for Acme Manufacturing Company; *H. E. Goodwin* for Fisheries Products Company; *T. A. Bosley* for Virginia-Carolina Chemical Company and Navarro Guano Company; *J. W. White* for International Agricultural Corporation and National Fertilizer Association; *H. C. Eargle* for Beaumont Chamber of Commerce; *F. E. Potts* for Port Arthur Chamber of Commerce & Shipping; *Edward A. Parsons* for New Orleans Publicly Licensed Warehouses; *R. A. P. Walker* for Interstate Cotton Seed Crushers Association; *Alexander Forward*, commissioner, and *Mason Manghum* for Commonwealth of Virginia; *H. V. C. Wade* and *W. A. Cox* for Norfolk Chamber of Commerce; *Joseph L. Young* for Buxton Line; *H. P. Friedman* for Gulf & Valley Cotton Oil Company, Limited, and International Vegetable Oil Company; *D. A. Dashiell* for F. S. Royster Guano Company; and *A. E. Beck* for Baltimore Merchants & Manufacturers Association.

REPORT OF THE COMMISSION

BY THE COMMISSION:

This proceeding was instituted to determine the—

reasonableness and propriety of the charges of common carriers subject to the interstate commerce act and applicable to interstate or foreign commerce, for wharfage, handling, storage and other accessorial service at the south Atlantic and Gulf ports at and south of Hampton Roads; and also as to the propriety of including in the rates to and from the ports the cost of or charges for the above services.

By announcement the order was construed as including within its scope switching charges to and from the water terminals at the ports and free-time allowances on ocean traffic while in cars or in storage warehouses at the ports.

Hearings were had at various points and a proposed report was prepared by the examiner, numerous exceptions thereto were filed, and oral argument before us has been had.

In addition to dealing with the more important situations affected by the fundamental questions involved in the proceeding, the examiner also recommended changes in charges and practices affecting certain individual commodities, namely, a reduction in the handling charges on fertilizer and fertilizer materials at south Atlantic and eastern Gulf ports, including New Orleans, La.; a reduction in the combined wharfage and handling charge on kerosene, in cases, at New Orleans; and like treatment of sewer pipe shipped from points on the Ohio River, on the one hand, and from Chattanooga, Tenn., on the other, in the matter of the absorption of wharfage and handling charges at south Atlantic and eastern Gulf ports.

At the argument a motion was made on behalf of the United States Shipping Board that individual questions of the kind last referred to be divorced from the more important and fundamental issues presented, and that, with respect to the latter, the proceeding be reopened and enlarged so as to include within its scope the terminal situation at other ports in addition to those along the south Atlantic and Gulf coasts.

The record presents numerous instances of the overlapping of competitive conditions affecting traffic handled through the north and south Atlantic ports, which raise questions that can not satisfactorily be disposed of in a proceeding limited to the south Atlantic and Gulf ports. One of the broad questions is as to whether there should be through rates to ship side or a separation as between the line and terminal charges. This is a question the solution of which will have general application and should not be considered upon a record which deals only with the southern situation, in view particularly of the increasing competition between the north and south Atlantic ports.

A consideration of all these matters brings us to the conclusion that this proceeding should be reopened and enlarged to include all the Atlantic and Gulf ports. This enlargement of the scope of the proceeding makes it necessary, in order that it may not become unwieldy, to confine our consideration to general principles of broad application and incidental questions closely related thereto, leaving matters of more or less local concern for separate handling as they may be brought to our attention in individual cases.

As illustrative of the character of issues which should be eliminated from the general proceeding we refer to the measure of the handling charges on fertilizer and fertilizer materials which the examiner proposed to reduce and which the carriers have proposed to reduce further in tariffs under suspension in an investigation and suspension proceeding which will be disposed of concurrently with this report. As illustrative of the character of issues which should remain for determination along with the general proceeding we refer to the examiner's proposed finding with respect to the absorption of wharfage and handling charges on sewer pipe from Chattanooga and points on the Ohio River, the practices of the southern carriers in this respect being intimately related to the practices of carriers serving north Atlantic ports.

The question of the reasonableness of handling charges on kerosene, in cases, at New Orleans also comes within the class which should be eliminated from the general proceeding. However, the interested parties introduced their evidence in this connection when it was proper that such evidence be received, and it would entail an unnecessary hardship upon them to require them to bring the matter up in a separate proceeding.

It is our opinion that the evidence of record here and the findings in *Handling Charges at Louisiana Ports*, 61 I. C. C. 379, support the recommendation of the examiner in this regard, and we find that the combined wharfage and handling charges on kerosene, in cases, at New Orleans is and for the future will be unreasonable to the extent it exceeds 3.5 cents per 100 pounds. No order giving effect to this finding will be issued at the present time, but if the respondents do not promptly comply therewith, the matter may again be brought to our attention for the issuance of an order.

An order reopening and broadening the scope of this proceeding as above indicated will be entered.

CHAIRMAN HALL dissents.

93 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 1802

CANCELLATION RULE FOR CONSTRUCTING COMBINATION RATES ON LUMBER BETWEEN SOUTHERN POINTS AND OHIO AND MISSISSIPPI RIVER CROSSINGS

Submitted January 3, 1924. Decided December 2, 1924

Former report, 81 I. C. C. 745, in which proposed cancellation of combination rule for constructing combination rates on lumber between southern points and Ohio and Mississippi River crossings, and proposed restriction of routing over Atlantic Coast Line from southern points to Virginia gateways were found not justified, affirmed upon reargument.

Charles D. Drayton and Frank W. Gwathmey for respondents.

Charles Cotterill, B. M. Angell, and J. B. Farish for protestants.

REPORT OF THE COMMISSION ON REARGUMENT

BY THE COMMISSION:

Respondents by schedules filed to become effective April 28, 1923, and on later dates, proposed to restrict the application of the so-called combination rule for constructing through rates on lumber from the Mississippi Valley and southern points of origin to Ohio and Mississippi River crossings, when shipments are destined to point beyond these crossings.

Upon protest of the Southern Pine Association of New Orleans, the Wholesale Lumbermen's Club of Birmingham, and other lumber interests the operation of the schedules was suspended. Upon protest of the North Carolina Pine Association schedules filed by the Atlantic Coast Line Railroad proposing to restrict the application of rates on shipments from points on its line or moving over its line so as to give that line its maximum haul to Virginia gateways were also suspended. In our original report herein, 81 I. C. C. 745, we found that the proposed schedules had not been justified and entered an order requiring their cancellation. Upon petition of respondents the proceeding was reopened for reargument, which has been had.

Respondents on reargument present no new facts and have done little more than restate and emphasize the contentions and arguments contained in their original brief. It clearly appeared from the evidence introduced by protestants that the schedules proposed by respondents would in many instances result in increased lumber rates over so-called unauthorized routes, and that there were both

actual and potential movements over some of these routes. Respondents made no attempt either at the hearing or on reargument to justify these increased rates. They apparently rely largely upon an interpretation of the combination rule, with which we can not agree, to justify the restriction to the rule which they propose.

The proposed schedules provide that the combination rule will not apply where there are joint through rates in effect from point of origin to destination "via any route." The original rule has been changed merely by adding the words, "via any route." Joint rates apply over the routes specified in the tariffs. On other routes over which such rates do not apply, the combination of separately established factors is applicable. If in one or both of the tariffs containing the separate factors there is reference to the combination rule, as is true in many instances, that rule is applicable and the rates over such routes must be constructed by use of the combinations treated by the rule. We affirm our original finding that a tariff provision such as was proposed and suspended would have the effect of increasing the lumber rates from the Mississippi Valley and southern points of origin to Ohio and Mississippi River crossings and that respondents have not justified these increased rates.

Another serious objection to the tariff provision proposed is that it does not fully conform to the requirements of section 6 of the interstate commerce act in that the restriction proposed makes necessary a search of other tariffs in order to determine whether there are joint rates over any route before it can be determined whether the rule is applicable.

We have no desire to continue indefinitely the operation of the combination rule. On the contrary, we feel that the carriers should use all due diligence in eliminating that rule from their tariffs as it is not, in our opinion, a desirable method of publication or one which fully meets the requirements of section 6 of the act. But, as we have pointed out, the record shows that if the proposed schedules had been allowed to become effective, certain of the rates involved would have been increased. We have found in a number of cases that the mere desire to eliminate the combination rule is not a justification for increased rates.

The following appears in the next to last paragraph on page 748 of our original report:

The reasonableness of the lumber rates under consideration is not in issue in this proceeding. * * * We believe that in the instant case the carriers should establish joint through rates on the basis contemplated in the rule before attempting to cancel or restrict its application.

Respondents point out that the statement in question, while indicating that the reasonableness of the rates is not in issue, in effect expresses an opinion as to the rates which should be established.

Upon further consideration, we are of the opinion that the record does not justify us in expressing the opinion that "the carriers should establish joint through rates on the basis contemplated in the rule before attempting to cancel or restrict its application," and said expression is hereby withdrawn.

In our original report we said regarding the proposed schedules of the Atlantic Coast Line:

In this connection it is well to state that the proposal of the Atlantic Coast Line Railroad to restrict the application of rates from points on or via its line so as to give that line its maximum haul to the Virginia gateway would have the same effect as restricting the application of the combination rule.

In their petition for reargument respondents say we fell into error in making this statement. They declare that there is no connection between the rules published in the tariffs dealing with the Jones combination basis and the restricted routing proposed by the Atlantic Coast Line. They admit that this restricted routing will increase rates over some of the so-called unauthorized routes. We had found that the application of the combination rule would result in increased rates. We also found that the proposed routing restrictions would result in increased rates. In that sense they would have the same effect.

The Atlantic Coast Line gave as its chief reason for proposing the routing restrictions contained in the suspended schedules its desire to prevent shipments of lumber from moving over the Winston-Salem Southbound and Norfolk & Western to Roanoke, because these shipments under the present tariffs may be reconsigned at Roanoke to eastern destinations via Norfolk at the joint rates. The routing restrictions proposed go much farther than this. They prevent lumber originating on the Atlantic Coast Line from moving over any of the so-called unauthorized routes, except that provision is made for routing shipments to Virginia gateways on the Southern, via Savannah, Ga., and the Southern, in addition to the routes over the Atlantic Coast Line.

The record was persuasive that the Atlantic Coast Line had not justified the routing restrictions proposed by it and nothing said on reargument has changed our view. This should not be construed as precluding the Atlantic Coast Line or any other carrier from canceling routes which are unduly circuitous or which are unnecessary for the proper handling of traffic.

Our original finding that the proposed schedules have not been justified is affirmed.

INVESTIGATION AND SUSPENSION DOCKET No. 2096

LIME FROM EASTERN TRUNK-LINE POINTS TO PITTSBURGH, PA., YOUNGSTOWN, OHIO, AND RELATED POINTS

Submitted July 18, 1924. Decided December 13, 1924

1. Proposed increased rates on lime, in carloads, from points in eastern trunk-line territory to destinations in 60 and 67 per cent territories found not justified. Suspended schedules ordered canceled, without prejudice to establishment of rates on basis approved herein.
2. Findings in *Lehigh Lime Co. v. A., C. & Y. Co.*, 85 I. C. C. 341, modified in part, and an adjustment of rates in accordance with such modified findings prescribed.

Wm. Meade Fletcher, jr., for respondents.

Allen S. Olmstead, 2d, and *William A. Glasgow, jr.*, for Eastern Lime Manufacturers' Traffic Bureau; *William W. Collin, jr.*, and *Walter, Burchmore, Collin & Belnap* for Jones & Laughlin Steel Corporation; *W. Earl Gardner* for Security Cement & Lime Company; *T. D. Geoghegan* for Lime Industries of Virginia; *H. H. Pratt* for Crucible Steel Company of America and Pittsburgh Crucible Steel Company; and *Charles S. Gormley* for Chamber of Commerce of Pittsburgh, Pa., protestants.

F. E. Paulson and *E. S. Gubernator* for Lehigh Lime Company, and *Robert E. Quirk* and *Norman, Quirk & Graham* for Ohio Lime Shippers, interveners.

F. E. Brown and *H. M. Mabey* for Mathieson Alkali Works.

REPORT OF THE COMMISSION

DIVISION 3, COMMISSIONERS MCCORD, CAMPBELL, LEWIS, COX, AND
McMANAMY.

CAMPBELL, *Commissioner*:

By schedules filed to become effective April 19, 1924, respondents proposed to increase the interstate commodity rates on lime, in carloads, from various points in Pennsylvania, West Virginia, Maryland, Virginia, New Jersey, New York, and Vermont to destinations in Pennsylvania, Ohio, and West Virginia in so-called 60 and 67 per cent territories. Upon protests of the Eastern Lime Manufacturers' Traffic Bureau, the Chamber of Commerce of Pittsburgh, Pa., and others, the operation of the schedules was suspended until August 17, 1924. Subsequently the effective date of the schedules was voluntarily postponed by respondents until January 14, 1925. The
93 I. C. C.

Lehigh Lime Company and a number of Ohio lime shippers intervened in support of the suspended schedules. Rates will be stated in cents per 100 pounds.

The suspended schedules were published following *Lehigh Lime Co. v. A., C. & Y. Ry. Co.*, 85 I. C. C. 341, hereinafter referred to as the *Mitchell case*, in which we found the rates on lime, in carloads, from Mitchell, Ind., to destinations in central territory in the States of Pennsylvania, West Virginia, Ohio, and Michigan, unreasonable and unduly prejudicial to complainant and unduly preferential of its competitors at Buckeystown, Frederick, Grove, and Lime Kiln, Md., Bakerton and Engle, W. Va., Stephens City and Strasburg, Va., and York, Pa. Lime shippers at these eastern points were not represented in that case. We there prescribed a distance scale of reasonable maximum rates from Mitchell and also required that the undue prejudice should be removed by the establishment of rates from the eastern points which should bear the same relationship to the rates from Mitchell as that which would obtain on basis of the distance scale from Mitchell on the one hand and of certain specified rates from the eastern points on the other. The rates specified from the eastern points were on a group basis, all of the origin points being treated as one group and the established percentage groups on westbound traffic being observed at destination points. The rate specified to all destinations in issue in 60 and 67 per cent territories was 19 cents, while to points in other percentage territories the rates specified were based on the established percentages of a basic 100 per cent rate of 28 cents. In proceeding to comply with our order in that case the carriers published rates from Mitchell based on the scale found reasonable and from the eastern points they observed the prescribed relationship. In addition thereto, they also published the same or related rates on lime from numerous other points in trunk-line territory to the destination territory above described. We permitted the rates from eastern points to destinations west of 67 per cent territory and the rates from Mitchell to all of the destinations to become effective.

Lime is derived chiefly from calcitic or dolomitic limestone by heating the stone in kilns until the carbon dioxide has been driven off. The three principal types of kilns used for this purpose are the pot, patent-shaft or vertical, and rotary. In the pot kiln, the oldest of these three types and which is now obsolescent, the limestone is burned by mixing the fuel, either coal or coke, with the stone. In the patent-shaft or vertical kiln the limestone is subjected to heat in the form of flame and the fuel does not come in contact with the stone. In rotary kilns the flame or the fuel, which sometimes consists of pulverized coal, is injected into the kiln. Lime as it comes

from the kilns is known as quicklime and is composed principally of calcium or of calcium and magnesium and other natural ingredients of limestone, the latter usually including a certain amount of silica, aluminum, and iron. The so-called run-of-kiln lime produced in pot kilns contains also more or less fuel ash and other foreign substances. Quicklime, either run of kiln or selected, is marketed both in lump and ground form. Another form of lime, known as hydrated lime, is produced by the reaction of quicklime with water. Some of the modern lime plants subject hydrated lime to a further process, referred to as a system of air separation, which eliminates from the lime all foreign substances.

The three principal commercial classifications of lime are chemical, building, and agricultural lime. In the *Mitchell case*, based on the testimony in that record, we said:

The active agent for chemical purposes is calcium, and lime with a high calcium content, generally over 90 per cent, is designated chemical or high-calcium lime. When the calcium content is 90 per cent or less the designation is building or agricultural lime. High-calcium lime may also be, and frequently is, used for building and agricultural purposes, but building or agricultural lime, because of its low calcium content, is not used in the chemical field. * * * The distinction between the kinds of lime is determined by the natural elements of which it is composed and not by any manufacturing process. The product of a plant is therefore the same without regard to the use to which it is put.

From the additional testimony of lime experts offered in the instant proceeding, it appears that these findings should be somewhat modified, as hereinafter indicated.

For some chemical purposes the active agent in lime is calcium and for others magnesium. There are so-called high-calcium and low-calcium and magnesium limes, and, while the division as to chemical content between these classes of lime is not definitely fixed, generally high-magnesium lime contains about 40 per cent magnesium, and high-calcium lime more than 90 per cent calcium. Both high-magnesium and calcium limes are suitable for building purposes. High-magnesium hydrated lime is especially adapted for and used extensively in the building trade as a finishing lime for plastering. Specifications for building lime issued by the American Society for Testing Materials, but not generally followed by the building trade, require lime with a total oxide content, either calcium or magnesium, of 95 per cent. The distinction between chemical and building lime is determined by the natural elements of which it is composed, except that the method of manufacture also is an additional determining factor where, as in the case of lime producers who sell chiefly to the chemical trade, the stone is selected, or where the lime is negligently or intentionally overburned, in which

event it is suitable for some chemical purposes but not for building purposes. The presence in lime of a certain amount of aluminum, iron, or silica, the usual impurities inherent in lime, tends to improve its value as a building material, but renders it unsuitable for certain chemical purposes. Both high-calcium and high-magnesium lime may be used for agricultural purposes, but, on the other hand, low-grade lime which has no recognized commercial value for building or chemical purposes is suitable for agricultural purposes and, where available, is generally used for such purposes.

The eastern points dealt with in the *Mitchell case* are in what is commonly known as the Baltimore rate group. The other eastern points from which increased rates on lime are proposed to 60 and 67 per cent territories are either in the same rate group, the Williamsport rate group, or established rate groups east thereof. The most important lime-consuming points in 60 and 67 per cent territories, respectively, are Pittsburgh, Pa., and Youngstown, Ohio, lime being extensively used by the steel industries at these points as a fluxing agent for steel purification, both in open-hearth and electric furnaces, and by the steel and other industries in the treatment of water used for generating steam, and for other chemical purposes. Other important lime-consuming points in the chemical field are Erie, Pa., Wheeling, W. Va., and Steubenville, Ohio, in 60 per cent territory, and Sharon, Pa., in 67 per cent territory. These and certain other points in these territories are also important markets for building lime. The general basis of commodity rates on lime from the Williamsport group is the same as that from the Baltimore group, the present rates from these groups being 16 cents to 60 per cent territory and 17 cents to 67 per cent territory. However, from the important lime-producing points in the Baltimore group, including those covered by our decision in the *Mitchell case*, to most of the important consuming points in these destination territories different rates are, and apparently for many years have been, published on lime of different descriptions and these rates are invariably lower than the group rates. The rate structure on lime from and to points in these territories as a whole is lacking in uniformity and consistency and is greatly in need of revision.

The present and suspended rates and rates based upon the *Mitchell* scale, together with the short-line distances, from lime-producing points in Maryland, Pennsylvania, Virginia, and West Virginia to Pittsburgh are shown in the table below. The producing points named in the table are taken from a statement submitted by the eastern lime manufacturers, which statement purports to show all of the present lime-producing points in trunk-line territory, and include practically all of the points shown in that statement which

take the Baltimore or Williamsport basis of rates on lime and from which commodity rates now apply. For the purpose of this table these points have been divided into three groups.

To Pittsburgh, Pa., from—	Distance	Present rates			Suspended rate (lime, all kinds)	Mitchell scale rate (lime, all kinds)
		Agricultural and chemical lime	Building lime	Fluxing lime		
Group 1:	<i>Miles</i>	<i>Cents</i>	<i>Cents</i>	<i>Cents</i>	<i>Cents</i>	<i>Cents</i>
Bellefonte, Pa.	164	11	13	13	19	13.5
Duncansville, Pa.	120	11	13	13	19	12
Frankstown, Pa.	125	11	13	13	19	12.5
Goodman, Pa.	147	13	16	13	19	13
Pleasant Gap, Pa.	167	11	13	13	19	13.5
Tyrone Forge, Pa.	132	11	13	13	19	12.5
Union Furnace, Pa.	137	11	13	13	19	12.5
Average of Group 1	142					13
Group 2:						
Williamsport, Pa.	211	16	16	16	19	14.5
Group 3:						
Buckeystown, Md.	257	11	13	9.5	19	16
Cavetown, Md.	231	11.5	13	9.5	19	15.5
Fountain Rock, Md.	271	11.5	14	16	19	16.5
Frederick, Md.	266	11	13	9.5	19	16.5
Grove, Md.	265	11	13	9.5	19	16.5
Le Gore, Md.	216	11.5	14	16	19	16.5
Lime Kiln, Md.	218	11	13	9.5	19	16
McAleer, Md.	272	11.5	14	16	19	16.5
Texas, Md.	311	11.5	14	16	19	17.5
Union Bridge, Md.	265	11.5	13	9.5	19	16.5
Walkersville, Md.	272	11.5	14	16	19	16.5
Woodsboro, Md.	268	11.5	14	16	19	16.5
Bittinger, Pa.	278	11.5	13	9.5	19	16.5
Carlisle, Pa.	267	13		13	19	16.5
Emigsville, Pa.	270	11.5	14	16	19	16.5
Hanover, Pa.	280	11.5	13	9.5	19	16.5
Thomasville, Pa.	281	11.5	13	9.5	19	17
Williamson, Pa.	257	11.5	14		19	16
York, Pa.	275	11.5	13	9.5	19	16.5
Capon Road, Va.	260	11	13	9.5	19	16
Stephens City, Va.	250	11	13	9.5	19	16
Strasburg, Va.	262	11	13	9.5	19	16.5
Strasburg Junction, Va.	261	11	13	9.5	19	16.5
Vaucluse, Va.	253	11	13	9.5	19	16
Bakerton, W. Va.	244	11	13	9.5	19	16
Berkeley, W. Va.	225	11.5	14	16	19	15.5
Bunker Hill, W. Va.	230	11.5	14	10	19	15.5
Engle, W. Va.	242	11	13	9.5	19	16
Martinsburg, W. Va.	221	11	13	9.5	19	15.5
Millville, W. Va.	242	11	13	9.5	19	16
Average of Group 3	260					16

From these same points to Youngstown, which is in 67 per cent territory and is about 65 miles northwest of Pittsburgh, the present rates are generally from 1.5 cents to 4 cents higher than to Pittsburgh. From York, Pa., for example, the present rates to Pittsburgh are 11.5 cents on agricultural and chemical lime and 13 cents on building lime, and the corresponding rates to Youngstown are 13 and 17 cents, respectively. From Union Bridge, Md., the present rates to Pittsburgh are 13 cents on building lime and 9.5 cents on fluxing lime, and the corresponding rates to Youngstown are 17 and 13 cents, respectively.

The proposed grouping of all of the above points of origin under a common rate is predicated both upon the general grouping above

described and upon the fact that differences in distance between these points are and for many years have been largely disregarded in the making of special rates therefrom on different kinds or descriptions of lime. Little if any uniformity, however, is observed in the grouping of destinations in 60 and 67 per cent territories under the present rates on different descriptions of lime from these producing points. For example, while the rate on building lime from most of the above points to Wheeling, a destination in 60 per cent territory, is the same as to Pittsburgh, the rate on chemical lime is 12.5 cents, or 1.5 cents higher than to Pittsburgh; and the rate on chemical lime to Erie, another 60 per cent territory destination, is 13 cents, or 2 cents higher than the rate on the same description of lime to Pittsburgh. In some instances the same rates apply to certain points in 67 per cent territory as apply to other points in 60 per cent territory.

From points east of those named in the above table, both the present and the suspended rates are generally made with relation to the group rates from Baltimore and Williamsport rate groups. The suspended rates from these eastern points range generally from 1 to 5 cents higher than the suspended 19-cent rate from the Baltimore and Williamsport rate groups. A special grade of lime is shipped from North Adams, Mass., which takes the Boston group rate, but with this exception there is apparently little if any movement of lime to the destination territory in question from the eastern points.

Lime shipped to Pittsburgh and points west thereof in 60 and 67 per cent territories from the points referred to in the above table originates principally at or in the vicinity of Bellefonte, York, Thomasville, Pleasant Gap, Bakerton, Berkeley, Martinsburg, Stephens City, Strasburg, and Strasburg Junction. High-calcium lime produced at or near Bellefonte is a large factor in the Pittsburgh and other chemical-lime markets in these territories, approximately 20,000 tons of high-calcium lime having been shipped from Bellefonte to Pittsburgh or points west thereof during 1923. Lime produced at Thomasville, York, and Martinsburg is also sold largely to the chemical trade at these destinations. Lime for building purposes is shipped mainly from the Virginia points named. So far as the record shows, lime for agricultural purposes is not shipped to 60 and 67 per cent territories from any of the origin points embraced in the suspended schedules.

Our decision and order in the *Mitchell case* are relied upon by respondents in justification of the suspended rates from the eastern points covered by the finding of undue prejudice in that case. They submitted no specific evidence in support of the reasonableness and propriety of the suspended rates from these points and urge that no obligation rested upon them to introduce such evidence in view

of the fact that the suspended rates from these points are in strict accord with our findings and order in the *Mitchell case*. In justification of the increased rates from the other points embraced in the suspended schedules, respondents urge that the rates from those points and from the points named in the *Mitchell case* are more or less interrelated and that the establishment of increased rates from the latter points, only, would have created numerous instances of undue prejudice and preference. With respect to these contentions of respondents it is sufficient to state that in the *Mitchell case* we were dealing with the rates from only a few specified points in the Baltimore group and the distances from the latter points to destinations in 60 and 67 per cent territories constituted an important factor entering into the determination of the relationship prescribed. By the suspended schedules now under consideration the carriers propose to establish the same rates from all lime-producing points in the Baltimore and Williamsport groups from which commodity rates now apply, notwithstanding that some of these points are much nearer to Pittsburgh than are the eastern points considered in the *Mitchell case*, and without regard to the fact that to the important consuming points in 60 and 67 per cent territories the hauls from all of the producing points are relatively short as compared with the hauls to central territory generally. The rate adjustment from the eastern points here under consideration is therefore much more comprehensive than that with which we were dealing in the *Mitchell case*. Under such circumstances our finding in the *Mitchell case* with respect to the relationship between the rates from Mitchell and the specified eastern points can not be regarded as immutable, but must be considered in the light of the much more comprehensive adjustment of rates here proposed from all of the important producing points in the Baltimore and Williamsport groups. Upon brief respondents concede that the suspended rate of 19 cents to Pittsburgh and other destinations in 60 per cent territory may be too high as applied from all of the origin points in the Baltimore and Williamsport groups, and suggest as a proper rate 16.5 cents, which is the rate under the Mitchell scale for 280 and over 260 miles. They have since suggested rates from these origin groups of 17 cents to 60 per cent territory and 19 cents to 67 per cent territory.

The Lehigh Lime Company, an intervener in this case and complainant in the *Mitchell case*, manufactures at Mitchell only high-calcium lime, which it sells principally to the chemical trade. For the latter's purposes this lime moves comparatively long distances. Few shipments thereof have heretofore been made to destinations in 60 and 67 per cent territories. This it attributes to the freight

rate adjustment under which relatively lower rates apply from eastern producing points, and this adjustment led to its complaint in the *Mitchell case*. Its sales in the agricultural and building fields are limited by competition from near-by producers to comparatively short distances in southern Indiana and southeastern Illinois. The present rates on lime from Mitchell are 19 cents to Youngstown, 416 miles, and 20 cents to Pittsburgh, 433 miles, or the same to Youngstown as, and 1 cent higher to Pittsburgh than, the suspended rate to those points from the eastern producing points above named. It is the contention of this intervener that the rates from the eastern points should be relatively higher than those from Mitchell and that the rates from Mitchell and the suspended rate from the eastern points covered by our order in the *Mitchell case* are fairly related. The difference in distance, it maintains, is offset by the more favorable operating conditions from Mitchell. In support of its contention that the rates from the eastern points should be relatively higher than those from Mitchell, it cites *National Paving Brick Mfrs. Asso. v. A. & V. Ry. Co.*, 68 I. C. C. 213, in which we prescribed higher rates on brick between points in trunk-line territory than between points in central territory, and the *Mitchell case*, in which we said that rates generally in trunk-line territory are on a level somewhat higher than in central territory. It compares the rates on lime from Mitchell with the rates on cement from that point and on brick from Bloomfield, Ind., a brick-producing point, to Pittsburgh, Youngstown, and a number of other points in 60 and 67 per cent territories, respectively. It also compares the present and suspended rates on lime from Buckeystown with the rates on brick from that point and on cement from York and a number of other points in the Baltimore rate group to the same destinations. These comparisons show that the rates on lime from Mitchell are from 1.5 to 2 cents higher than the rates on cement and slightly in excess of 2 cents higher than the rates on brick, while the present rates on lime from Buckeystown are in all instances lower than the rates on brick, and, except in a few instances where they are the same, are also lower than the rates on cement from York. The suspended 19-cent rate on lime from the eastern points is the same as the rate on brick and 1 cent higher than the rates on cement, to the points referred to in 67 per cent territory, and 3 cents higher than the rates on cement, and 2 cents higher than those on brick to the points referred to in 60 per cent territory. This intervener urges that rates on lime generally are higher than rates on brick and should also be slightly higher than the rates on cement for comparable hauls. With respect to the eastern points found in the *Mitchell case* to be unduly preferred, it insists that if the suspended rates are found

not justified and lower rates prescribed, corresponding reductions should be made in the rates from Mitchell. It concedes, however, that from Bellefonte and other points from which the distance to Pittsburgh is materially less than from the points above referred to the rates may properly be lower than from the latter points, but contends that so long as the existing grouping of producing points is maintained the rates should be determined with relation to the average distance from the entire group.

The Ohio lime shippers who intervened in this proceeding produce both high-calcium and high-magnesium lime. At present the total production of lime in Ohio exceeds that of any other State. The points in this State at which high-magnesium lime is manufactured are Woodville, Gibsonburg, Genoa, White Rock, Clay Center, Carey, Luckey, Cold Springs, and Tiffin. Cold Springs is in the southern part of Ohio near Springfield. Carey, Gibsonburg, Tiffin, and the other points above named are in the north central part of Ohio. Approximately 90 per cent of the lime produced at Woodville, which the record indicates is typical of the other points named, is a hydrated lime of superior quality used in the building trade largely as a finishing lime for plastering. This lime is sold not only in Pittsburgh but to some extent at points as far east as New York and at certain points in New England. About 10 per cent of the lime produced at Woodville is ground burned lime, which is sold to some extent to the chemical trade for use principally in connection with the manufacture of glass, sulphite pulp, lubricants, and certain kinds of leather. High-calcium lime is produced at Sandusky, Delaware, Marion, Owens, and Marblehead. Sandusky and Marblehead are in the north central part of Ohio, and Delaware, Marion, and Owens in central Ohio. The high-calcium lime produced at these points is used for the same purposes as is that produced at the eastern points. It is stated in a general way that high-magnesium lime can also be put to the same uses as the lime originating at the eastern points, but it is not clear from the record that the eastern product, except possibly that of the kilns in eastern Pennsylvania which is a high-magnesium lime, is actually used for the same purposes as the high-magnesium hydrated or so-called finishing lime manufactured at the Ohio points. The eastern Pennsylvania points which produce this magnesium lime take the Philadelphia basis of rates, or rates considerably higher than those from the points named in the above table to 60 and 67 per cent territories. Some of the lime produced at Delaware is sold to the building trade, by which it is known as mason's lime, and is used in the preparation of mortar. Lime which the eastern points in the Baltimore group sell in the building field is used chiefly for the same purpose. The rates from Ohio

points to destinations in 60 and 67 per cent territories apply on all kinds of lime, except that to points in 67 per cent territory to which the haul is intrastate, and on intrastate movements generally in Ohio, the rates on agricultural lime are lower than the rates on other kinds of lime. From Woodville, Marion, Delaware, Marblehead, Sandusky, and Cold Springs, referred to as typical of the Ohio producing points, to representative destinations in 60 and 67 per cent territories the rates on lime range from 13 to 17 cents. Both the origin and destination points are to an extent grouped under these rates. The rate of 13 cents is shown to apply for distances from 89 to 132 miles, a rate of 14 cents from 126 to 190 miles, a rate of 16 cents from 158 to 246 miles, and the rate of 17 cents from 155 to 349 miles. The rate of 14 cents applies to Youngstown from all of the origin points above named except Cold Springs; the rate of 16 cents applies to destinations such as Wheeling and Steubenville; and the rate of 17 cents applies to Pittsburgh, Erie, and Buffalo from all of these origin points. These rates are, with a few exceptions where they are the same, on a higher level than the rates for corresponding distances in the Mitchell scale and in all instances are on a higher level than the special rates from the eastern points. It was testified for lime producers at Delaware and Owens that they have experienced much difficulty in selling their product at points in 60 and 67 per cent territories because of the lower rates on lime to these points from the East, and for producers at Sandusky and a number of other Ohio points that their principal competitors with respect to 60 and 67 per cent territories are located at the eastern points. It is contended that these destinations are logical markets for lime produced in Ohio and that the present rates from the East subject the Ohio producers to undue prejudice which will be removed if the proposed rates are permitted to become effective.

Protestant eastern lime producers assert that the rates sought to be increased were established voluntarily by the carriers and except as modified by the general increases and reduction, have been in effect for many years. They urge that these rates are in line with rates on the same commodity between other points in eastern trunk-line territory and in support thereof exhibit rates on chemical and building lime from certain of the same and other lime-producing points to a number of destinations in this territory which are on substantially the same level as the present rates on lime of the same description from and to some of the points here considered. They show that the proposed rates to Pittsburgh from Bellefonte and other important eastern producing points taking the same or substantially the same rates represent increases ranging from 36 per cent on building lime to 100 per cent on fluxing lime. The increase on agri-

cultural and chemical lime from Bellefonte would be about 73 per cent. Among other rates cited by these protestants are rates of 11.5 cents on chemical lime from Buffalo, N. Y., to Pittsburgh, 233 miles, and 13 cents on chemical and building lime from Danby, Vt., to New York, N. Y., 236 miles. For those distances the rate under the Mitchell scale would be 15.5 cents. The rate shown on chemical and building lime from Bellefonte to a number of points in New Jersey for distances ranging from 311 to 330 miles is 16 cents. For corresponding distances the present rates from producing points in the Baltimore group are as low in some instances as 11.5 cents on chemical lime and 14 cents on building lime. The rates under the Mitchell scale for those distances would be 17.5 cents. In this connection it should be borne in mind that while the distance from Bellefonte to Pittsburgh is only 164 miles the carriers now apply substantially the same rates on chemical and building lime from points as far distant as 311 miles. Although the detailed history of the rates is not shown, the record indicates that as to certain descriptions of lime, including chemical and fluxing lime, special rates to Pittsburgh lower than the group basis were originally established by the carriers from points in the general vicinity of Bellefonte and Altoona, and that thereafter, in recognition of commercial competition, the carriers established similar rates from other points in the Baltimore and Williamsport groups without regard to the much greater distances from the latter points.

The present rates on lime from the eastern points are generally the same to all points in the metropolitan district of Pittsburgh, including Hazelwood, and also apply to Wilksburg, Glenwood, Homestead, McKeesport, Bessemer, and Edgewood, Pa., and other points on respondents' lines directly east of Pittsburgh proper. No change is proposed in the rates on lime to the last seven named points, and, if the suspended rates are allowed to become effective, the differences in rates in favor of these points would be 6 cents on building lime, 8 cents on chemical lime, and 9.5 cents on fluxing lime. Dealers in builders' supplies with warehouses in Pittsburgh testified that they receive shipments of lime from the eastern lime plants, particularly those in Virginia, which they sell in certain sections of Pittsburgh in competition with dealers having warehouses at Wilksburg, Glenwood, Edgewood, and Homestead, and that they could not successfully compete with the latter under the proposed rate adjustment. Protestants Crucible Steel Company of America and Pittsburgh Crucible Steel Company, with plants at Pittsburgh and Midland, Pa., the latter 30 miles west of Pittsburgh in 60 per cent territory, and the Jones & Laughlin Steel Corporation, with plants at Pittsburgh and Woodlawn, Pa., compete in the sale of

their products with the manufacturers of steel at Bessemer, McKeesport, and Homestead. The first two of these latter protestants operate electric furnaces at Pittsburgh in which they use lime that is substantially free from impurities. Since January 1, 1924, these protestants have drawn the supply of this lime from Buffalo, but prior thereto had received shipments of this commodity from a number of the eastern points here considered. All of these protestants urge that the proposed rates would subject them to undue prejudice.

The proposed rates would result in numerous violations of both the long-and-short-haul rule and aggregate-of-intermediates provision of the fourth section, in that the rates from a number of Virginia lime-producing points in which no change is proposed would be lower than the proposed rate from certain of the eastern points through which traffic from the Virginia points could and probably does move to destinations in 60 and 67 per cent territories, and the proposed rate to Pittsburgh and other points grouped therewith would exceed rates made by combination on certain of the points east thereof. For example, the proposed rate on lime to Youngstown, Sharon, and Wheeling is 19 cents from Engle, and the rate from Linville, Va., a farther distant point over the same route is 16.2 cents. The proposed rate from the eastern points named in the foregoing table to Pittsburgh is 19 cents. The rate on building lime from most of these points to Hazelwood is 13 cents and the switching rate beyond to other Pittsburgh stations 38 cents per ton, equivalent to 1.9 cents per 100 pounds, making a combination of 14.9 cents. The rate from the eastern points on fluxing lime to Glenwood is 9.5 cents and from Glenwood over the Monongahela Connecting Railroad to the Pittsburgh plant of protestant Jones & Laughlin Steel Corporation 15 cents per net ton, making a combination of 10.25 cents. It appears that the trunk-line respondents called upon the southern carriers serving the Virginia points to make such revision in the rates from the latter points as was necessary in order to prevent fourth-section departures, but that upon the insistence of the Virginia lime producers no such revision was made by the southern carriers pending determination of the proper rates to be applied from the intermediate trunk-line points.

As above shown, the present rates on building, chemical, and fluxing lime from the eastern points to Youngstown exceed the rates to Pittsburgh by from 1.5 to 4 cents and the general basis of lime rates from these points is 1 cent higher to Youngstown than to Pittsburgh. The proposed rate is the same to both destinations. Protestant steel manufacturers contend that by the proposed rate parity from the east to Youngstown and Pittsburgh the latter will

be deprived of the benefit of its geographical location and subjected to undue prejudice and Youngstown unduly preferred.

Buffalo produces high-calcium lime which is sold for chemical purposes in Pittsburgh in competition with lime produced at the eastern points. The rate on chemical lime from Buffalo to Pittsburgh, 233 miles, is 11.5 cents. By the suspended schedules no change is proposed in this rate, but respondents have indicated their intention of revising this rate in harmony with the rates which may be approved by us in this proceeding.

As above indicated, agricultural lime does not move to 60 and 67 per cent territories from any of the producing points here considered, including the points found to be preferred in the *Mitchell case*. The proposed increases in the rates on agricultural lime are not warranted, therefore, on the ground that the present rates are the source of undue prejudice and preference as compared with the rates from Mitchell. The evidence shows that what is strictly known as agricultural lime is of a lower grade than lime generally used for chemical or building purposes.

Protestant Jones & Laughlin Steel Corporation, through its subsidiary, the Blair Limestone Company, operates a lime plant at Martinsburg, served by respondent Baltimore & Ohio Railroad. The lime produced at this plant is burned in pot kilns and is shipped for the most part as run-of-kiln lime to this protestant's steel mills at Pittsburgh and Woodlawn, where it is used as a fluxing agent in open-hearth furnaces. This lime is designated in respondents' tariff as fluxing lime, and the present rates thereon are 9.5 cents to Pittsburgh and 12 cents to Woodlawn. The proposed rate is 19 cents to both destinations. The run-of-kiln lime produced at this plant contains a substantial amount of foreign matter, including coke ash, unburned coke, clay, clinker, and pieces of brick from the kiln lining, as well as inherent impurities such as silica, aluminum, iron, phosphorus, and sulphur that are fused with the lime. Some of the more noticeable foreign matter is removed by hand, but otherwise this product is not further treated or processed before being shipped as fluxing lime. The Blair Limestone Company also puts a small amount of this lime through a further process and sells it as agricultural or hydrated lime, but the Jones & Laughlin protest does not go to that commodity. The latter product is shipped in sacks and the run-of-kiln lime is shipped in bulk. The average loading of this so-called fluxing lime is 70,000 pounds, and the average loading of other lime shown of record is from 50,000 to 57,240 pounds. Due to the foreign matter and impurities which it contains, the run-of-kiln product of this plant is not suitable for general chemical use or for building purposes. High-

calcium lime without foreign matter or impurities is generally used as a fluxing agent in the manufacture of steel and can be and sometimes is used for that purpose in this protestant's open-hearth furnaces, but, because of the higher price which it commands, its use for this protestant's purposes is uneconomical. So far as the record shows lime similar in character to that manufactured by this protestant is not produced either at Mitchell or at any of the Ohio points above mentioned and the maintenance of the present rates on this lime from Martinsburg to Pittsburgh and Woodlawn would not result in undue prejudice to intervening lime producers. The principal movement of this character of lime to the destination territory in question is from Martinsburg. Another eastern lime producer located at Le Gore, Md., manufactures similar lime which he sells for agricultural purposes.

In our report in the *Mitchell case* we clearly indicated that lime which contained a substantial portion of residue or foreign matter, including that character of lime produced in pot kilns at some of the eastern points, might properly be accorded lower rates than those contemporaneously maintained on the higher grades of lime produced at other points in trunk-line territory and at Mitchell. Lime of this same general character and lime which is strictly known as agricultural lime have no recognized commercial value for chemical or building purposes and are not generally used for such purposes. Such lime generally moves for comparatively short distances and there is apparently no reason why under an appropriate tariff description it can not be effectively policed as distinguished from the higher grades of lime. There is a clear distinction between, on the one hand, making different rates for application between the same points on the same commodity conditioned solely upon the use to which the commodity is to be put, a practice which we have frequently condemned, and, on the other hand, making different rates on different commodities and taking into consideration, along with other factors, the general use to which the respective commodities are put for the purpose of determining the applicable rate.

Protestant eastern lime producers contend that there is also a real difference between chemical and building lime, and point out that the two are recognized as different in the trade and by the United States Government. They concede, however, that it is difficult, if not impracticable, so to define these limes that one can be readily distinguished from the other. Both are subjected to a greater degree of preparation than are the so-called agricultural and fluxing limes above discussed, and not infrequently a given lime can be and is used either for building or chemical purposes. The relative value of lime which moves at the rates on building

and chemical lime, respectively, from the eastern points is not given. There is general testimony that the so-called chemical lime loads somewhat heavier than building lime; and it appears that the former moves in somewhat greater volume and more regularly than the latter. The evidence, however, falls short of establishing that chemical and building lime are sufficiently dissimilar from a transportation standpoint to warrant the maintenance of different rates thereon. As previously stated, intervener Lehigh Lime Company manufactures high-calcium lime which it sells in the chemical field, as also do certain of the intervening Ohio lime shippers; and lime designated as building lime and similar in character to that produced at a number of the eastern points is also manufactured at certain of the Ohio points.

These protestants strongly oppose the establishment of any relationship between the rates from the eastern points and from Mitchell or the Ohio points to these destination territories based upon the Mitchell scale. They urge that the Mitchell scale applies to numerous points to which little if any lime moves and is not, therefore, appropriate for application to points such as Pittsburgh and Youngstown, to which lime moves in large volume from the East. In this connection they cite rates on lime from eastern producing points to a number of large eastern cities, including rates on chemical lime of 13 cents for 236 miles, 11 cents for 241 miles, and 9 cents for 204 miles, which are lower than the rates in the Mitchell scale for corresponding distances.

There is no uniformity or consistency in the present rates on lime in trunk-line territory or between that territory and points in 60 and 67 per cent territories. Not only are there varying rates between the same points on different descriptions of lime, particularly between the points here under consideration, but in many instances the same rate applies for widely varying distances and in other instances there are several different rates between the same points on the same description of lime. As before stated, the rates from Ohio lime-producing points to these destinations are, with some few exceptions where they are the same, on a higher level than the rates in the Mitchell scale. It should also be noted that the Mitchell scale applies not only to many apparently unimportant lime-consuming points, but also to large industrial centers such as Cincinnati and Cleveland, Ohio, and Detroit, Mich., as well as to Pittsburgh and Youngstown. A representative of one of the largest producers of lime at Bellefonte stated that his company is satisfied with the grouping of Bellefonte with the farther distant points. At the same time any increase in the present rates from Bellefonte is opposed on the ground that Bellefonte is only 164 miles from Pitts-

burgh. Respondents also desire to continue the present grouping and have grouped under the proposed 19-cent rate all of the eastern points named in the above table. However, the expressed desire of the eastern producers and of the respondents for the continuance of this grouping does not relieve us of the duty of considering whether its continuance would result in unjust and unreasonable rates or in undue prejudice. *C., H. & D. Ry. Co. v. Inter. Com. Com.*, 206 U. S. 142. In view of our findings in the *Mitchell case* and of the competitive relationship which exists between Mitchell and the Ohio producing points on the one hand and the eastern producing points on the other, it is apparent that the existing grouping of the eastern points with respect to the comparatively short-haul traffic to 60 and 67 per cent territories can not be maintained without resulting in unduly low rates from the farther distant points in that group to the undue prejudice and disadvantage of Mitchell and the Ohio points, or in unduly high rates from the less distant points in the eastern groups, such as Bellefonte.

The table below, compiled from an exhibit submitted by intervenor Lehigh Lime Company, shows the approximate average distances to the important lime-consuming points in 60 and 67 per cent territories from representative producing points in the three groups indicated in the preceding table, together with the rates under the Mitchell scale for corresponding distances:

To—	Group 1		Group 2		Group 3	
	Dis- tance	Mitchell scale	Dis- tance	Mitchell scale	Dis- tance	Mitchell scale
Pittsburgh.....	<i>Miles</i> 154	<i>Cents</i> 13	<i>Miles</i> 206	<i>Cents</i> 14. 5	<i>Miles</i> 260	<i>Cents</i> 16
Youngstown.....	217	14. 5	269	16. 5	330	17. 5
Sharon.....	237	15. 5	276	16. 5	339	17. 5
Steubenville.....	196	14	249	16	313	17. 5
Wheeling.....	220	14. 5	273	16. 5	329	17. 5
Erie.....	240	15. 5	248	16	400	18. 5
Approximate average to above points other than Pittsburgh.....	220	14. 5	263	16. 5	340	17. 5

We find that the suspended schedules have not been justified.

We further find that the interstate rates on lime, in carloads, except lime which has no generally recognized commercial value for chemical or building purposes, from the points found to be unduly preferred in the *Mitchell case*, namely, Buckeystown, Frederick, Grove, and Lime Kiln, Md., Bakerton and Engle, Va., Stephens City and Strasburg, Va., and York, Pa., are, and for the future will be, unduly preferential of lime producers at those points and unduly prejudicial to intervenor Lehigh Lime Company to the extent that

the rates from those points to destinations in central territory in Pennsylvania, Ohio, and West Virginia in the percentage groups known as 60 and 67 per cent territories fail to bear the following relationship to the contemporaneous rates from Mitchell, Ind., to the same destinations: From Buckeystown, Frederick, Grove, Lime Kiln, Bakerton, Engle, Stephens City, Strasburg, and York, as follows: 16.5 cents to Pittsburgh and points in the Pittsburgh district; 18 cents to Youngstown, Sharon, Steubenville, Wheeling, and Erie; and rates to other points in said destination territory that will be in harmony with the rates to the points above specifically named; from Mitchell, on the basis prescribed as reasonable in *Lehigh Lime Co. v. A., C. & Y. Ry. Co., supra*.

Our findings in the *Mitchell case* are hereby modified accordingly. We further find that rates constructed on the above basis will be just and reasonable.

In reaching the above conclusion with respect to the eastern producing points involved in the *Mitchell case*, we have taken into consideration the related eastern producing points in the Baltimore and Williamsport rate groups embraced in the suspended schedules. In making the necessary revision from the latter points, the rates on lime as above described should not exceed the following:

From—	To Pitts- burgh	To Youngs- town, Sharon, Steuben- ville, Wheeling, and Erie
	<i>Cents</i>	<i>Cents</i>
Group 1 points as hereinbefore described.....	13.5	15.5
Group 2 points as hereinbefore described.....	15	17
Group 3 points as hereinbefore described.....	16.5	18

With respect to traffic from points east of Group 3, including Baltimore, Md., and points differentially related thereto, no reason is apparent on this record why the present destination grouping should not be continued, subject to maximum rates from Baltimore of 18 cents to 60 per cent territory and 19 cents to 67 per cent territory.

We make no finding as to the reasonableness of the present rates on so-called agricultural or fluxing lime which has no generally recognized commercial value for chemical or building purposes.

The suspended schedules will be ordered canceled, without prejudice to the establishment of revised rates not inconsistent with our conclusions herein. Such revised schedules should be free from the violations of the act alluded to in this report.

As above pointed out, the rates from Ohio producing points to this destination territory are in many instances on a higher basis than that which would obtain under the *Mitchell case* scale, but it is impossible on this record to grant any affirmative relief to the Ohio interveners with respect to such rates. However, the establishment of rates from the eastern points in accordance with our conclusions herein will go far toward removing the alleged undue prejudice against these Ohio producers.

Since the hearing in this proceeding formal complaints docketed as No. 16170, *Eastern Lime Mfrs. Traffic Bureau v. A. & B. B. R. R. Co.*, have been filed which present a general attack on the rates on lime from points in Ohio to destinations in central territory and from points in trunk-line territory to destinations in the various percentage groups, including 60 and 67 per cent territories. It should be understood that our conclusions herein are without prejudice to different conclusions which may be reached in those cases.

An order will be entered requiring the cancellation of the suspended schedules and also requiring the establishment of an adjustment of rates to the destination territory under consideration in accordance with our findings in the *Mitchell case* as modified herein.

93 I. C. C.

No. 13026

WICHITA MOTORS COMPANY v. ALABAMA & VICKSBURG RAILWAY COMPANY ET AL.

Submitted October 17, 1924. Decided December 9, 1924

Former report, 88 I. C. C. 152, finding rates on self-propelling freight vehicles, in carloads, from Wichita Falls, Tex., and Oklahoma City, Okla., to Galveston, Tex., and New Orleans, La., for export, not unreasonable but unduly prejudicial, affirmed. Original order made effective.

C. D. Arnold and *W. H. Caldwell* for complainant.

G. B. Ross, M. J. Dowlin, T. L. Bothwell, W. A. Blank, A. T. Witcher, Robert Thompson, and Terry, Cavin & Mills for defendants.

REPORT OF THE COMMISSION ON RECONSIDERATION

BY THE COMMISSION:

In our former report, 88 I. C. C. 152, we found that the rates on self-propelling freight vehicles, in carloads, from Wichita Falls, Tex., and Oklahoma City, Okla., to Galveston, Tex., and New Orleans, La., for export, were not unreasonable, but that they subjected complainant to undue prejudice and disadvantage and unduly preferred shippers at Chicago, Ill., and St. Louis, Mo., to the extent that they exceeded the rates contemporaneously maintained from Chicago and St. Louis to Galveston and New Orleans, for export, in so far as these defendants participate in the latter rates. The undue prejudice was ordered removed. The rates referred to were as follows:

From—	To Galveston				To New Orleans			
	Distance	Minimum 12,000 pounds ¹	Minimum 20,000 pounds ²	Minimum 15,000 pounds ³	Distance	Minimum 12,000 pounds	Minimum 20,000 pounds	Minimum 15,000 pounds
	<i>Miles</i>	<i>Cents</i>	<i>Cents</i>	<i>Cents</i>	<i>Miles</i>	<i>Cents</i>	<i>Cents</i>	<i>Cents</i>
Wichita Falls.....	420	160.5	131.5	105	654	194.5	158.5	105
Oklahoma City.....	513	162	135	105	695	201	165.5	105
Chicago.....	1,151	132	112	112	921	132	112	112
St. Louis.....	867	120.5	102.5	102.5	709	120.5	102.5	102.5

¹ Set up, minimum 12,000 pounds.

² Body and chassis, knocked down, minimum 20,000 pounds.

³ Chassis, knocked down, minimum 15,000 pounds, except as noted.

⁴ Minimum 24,000 pounds, commodity rate.

Upon petition for rehearing or reargument filed by defendants this proceeding was reopened for oral argument and the effective date of the order postponed until our further order.

Complainant was not represented at the oral argument. Defendants point out that rates from Chicago to New Orleans are controlled by the direct lines which do not go through Oklahoma and Texas; that the rates to Galveston are made to equal those to New Orleans; that the rates from Chicago to these Gulf ports are controlled largely by the rates from Chicago to New York, N. Y., 912 miles, which were 138.5 and 117.5 cents, according to the minimum and particular article shipped; and that similar conditions do not affect traffic from Wichita Falls and Oklahoma City to Galveston and New Orleans. Defendants refer to testimony which indicates that it would be of some advantage to complainant if Chicago shippers could not ship via New Orleans, but that complainant's chief competition is with firms shipping from central territory via New York.

These facts were all fully considered in our former report. We recognized there the competition referred to and said:

* * * nevertheless complainant does have cause to complain, under the interstate commerce act, of the length to which defendants have gone in meeting those rates. The lower rates from Chicago and St. Louis to Galveston are applicable over the same lines and in the same direction as from Wichita Falls and Oklahoma City, and these lower rates also include ship-side delivery. Conceding that defendants are under no obligation to establish less than reasonable rates for the purpose of overcoming any disadvantage complainant may suffer by reason of the greater distance from the source of supply, there are no facts of record, which justify the collection of higher rates from complainant than from competing producers at more distant points.

We adhere to these views and affirm the findings in our former report. An appropriate order will be entered.

HALL, *Chairman*, dissenting:

For reasons sufficiently indicated in my dissent to the original report, 88 I. C. C. 152, at pages 156-157, I am unable to join in the conclusions reached by the majority.

I am authorized to state that COMMISSIONERS EASTMAN and POTTER concur in this expression.

COMMISSIONER LEWIS dissents.

No. 8406¹

JONES & LAUGHLIN STEEL COMPANY v. PITTSBURGH
& LAKE ERIE RAILROAD COMPANY, DIRECTOR
GENERAL, AS AGENT, ET AL.

Submitted November 3, 1924. Decided December 8, 1924

Reparation awarded to complainants and interveners in respect of interstate carload shipments made during the period from April 1, 1914, to April 14, 1915, both dates inclusive, on which complainants and interveners paid the charges of the Monongahela Connecting Railroad Company, the South Buffalo Railway Company, and Union Railroad Company in addition to the district rates of their trunk-line connections.

John Andrew Ronan for Joseph Joseph & Brothers Company and Hyman-Michaels Company; *H. E. Mitchell* for Seneca Iron & Steel Company; *Kellogg, Babcock & Sullivan* and *K. A. Kemmerer* for Lackawanna Bridge Company; *Cravath, Henderson & de Gersdorff* for South Buffalo Railway Company; *Chas. S. Belsterling* for American Bridge Company; *Kennefick, Cooke, Mitchell & Bass* for Buffalo Brake Beam Company; and *L. P. Day* for defendants.

REPORT OF THE COMMISSION

HALL, *Chairman*:

In a former report in No. 8406, *Jones & Laughlin Steel Co. v. P. & L. E. R. R. Co.*, 91 I. C. C. 300, we found, among other things, that defendants had failed to justify increased rates during the period from April 1, 1914, to April 14, 1915, inclusive, in so far as they resulted in transportation charges exceeding those contemporaneously in effect to and from trunk-line points in the same rate district; and that the aggregate charges applicable during that period, referred to as the period of nonabsorption, were unjust and unreasonable to the extent indicated. The increased rates were brought about by the trunk lines discontinuing their absorp-

¹ This report also embraces No. 8767, *Seneca Iron & Steel Company v. South Buffalo Railway Company et al.*; No. 8767 (Sub-No. 1), *Lackawanna Bridge Company v. Same*; No. 8767 (Sub-No. 2), *Buffalo Brake Beam Company v. Same*; No. 9058, *American Bridge Company v. Union Railroad Company et al.*; No. 9058 (Sub-No. 1), *Same v. Same*; No. 9058 (Sub-No. 2), *Same v. Same*; No. 9110, *Knauff & Esterbrook et al. v. Newburgh & South Shore Railway Company et al.*; and No. 9271, *Hyman-Michaels Company v. Pennsylvania Railroad Company et al.*

tion of the switching charges of the industrial railroads heretofore found to have been, at all times covered by the complaints, common carriers subject to the act to regulate commerce, lawfully entitled to receive from their respective trunk-line connections divisions of joint rates or absorptions of switching charges under appropriate tariff provisions, such divisions or absorptions to be reasonable. Full history and details of these proceedings will be found in that report.

We awarded reparation to all complainants and interveners except Joseph Joseph & Brothers Company. No. 8406 was set for further hearing to enable that intervener to submit proof as to charges paid by it. The other cases embraced in this report were set for hearing at the same time. They had been on our suspense docket pending determination of the issues in No. 8406. They cover relatively small claims on shipments moving to and from plants served by the industrial roads.

At the hearing it was agreed that the findings in our former report, *supra*, as to the unreasonableness of the increased rates during the period of nonabsorption could be considered as controlling here.

Joseph Joseph & Brothers Company, a corporation, intervener in No. 8406, made a number of shipments of scrap iron to the Jones & Laughlin Steel Company, Pittsburgh, served by the Monongahela Connecting. Seneca Iron & Steel Company, a corporation, complainant in No. 8767, manufactures sheet steel at a plant near Buffalo, N. Y., on the rails of the South Buffalo Railway. It has abandoned certain claims against the Western Transit Company and the Mutual Transit Company, corporations no longer in existence. Lackawanna Bridge Company, a corporation, complainant in No. 8767 (Sub-No. 1) during the nonabsorption period operated a plant for the fabrication of iron and steel on the rails of the South Buffalo. American Bridge Company, a corporation complainant in No. 9058 and Sub-Nos. 1 and 2, includes in its many lines of activity the fabrication of steel and erection of buildings, bridges, and other structures. During the nonabsorption period it made shipments to and from points served by the Union Railroad. They consisted for the most part of builders' outfits. Hyman-Michaels Company, a corporation, complainant in No. 9271, made a few shipments of scrap iron to Jones & Laughlin Steel Company, Pittsburgh, served by the Monongahela Connecting.

Upon this record and following *Jones & Laughlin Steel Co. v. P. & L. E. R. R. Co.*, *supra*, we find that defendants have failed to justify the increased rates during the period of nonabsorption in so far as they resulted in transportation charges exceeding those contempora-

neously in effect to and from trunk-line points in the same rate districts, and that the aggregate charges applicable during the period of nonabsorption were unjust and unreasonable to that extent; that complainants and interveners made shipments as described and paid and bore the freight charges thereon herein found to have been unreasonable; that they have been damaged thereby in the amount of the difference between the transportation charges paid and those which would have accrued at the district rates herein found reasonable; and that they are entitled to reparation with interest at the rate of 6 per cent per annum. As in previous awards of reparation in No. 8406, the industrial roads should severally participate in payment of the reparation here awarded to the extent that their respective charges on the shipments covered by the claims exceeded 10 cents per ton, net or gross as rated. Complainants and interveners should comply with Rule V of the Rules of Practice.

Buffalo Brake Beam Company, complainant in No. 8767 (Sub-No. 2), did not present proof, its witness not being available. Unless further hearing is requested within 10 days after service of this report its complaint will be dismissed for want of prosecution.

No appearance was entered in behalf of complainants in No. 9110. An order will be entered dismissing their complaint for want of prosecution.

COMMISSIONER EASTMAN dissents.

93 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET NO. 2101¹HANDLING CHARGES ON CEMENT, FERTILIZERS, AND
SALT AT SOUTH ATLANTIC AND GULF PORTS

Submitted November 12, 1924. Decided December 9, 1924

1. Proposed reduced charges for handling fertilizer, fertilizer materials, cement, and salt at south Atlantic and certain Gulf ports found justified.
2. Proposed change in rule defining the service of handling at south Atlantic and certain Gulf ports found justified.
3. Orders of suspension vacated and proceedings discontinued.

Frank W. Gwathmey and Henry Thurtell for respondents.

John Nicholson for United States Shipping Board.

J. V. Norman and Norman, Quirk & Graham for Port Utilities Commission of Charleston, Municipal Docks & Terminals of Jacksonville, Wilmington Compress & Warehouse Company, Commodore Point Terminal Company, McGiffin & Company, Turner Terminal Company, and Fred Richards; *Charles E. Cotterill* for Swift & Company, International Agricultural Corporation, Southern Agricultural Chemical Corporation, A. T. Vanderbilt and George C. Wilson, receivers for Virginia-Carolina Chemical Company, Armour & Company, W. R. Grace & Company, E. I. du Pont de Nemours & Company, American Agricultural Chemical Corporation, and City of Savannah; *J. W. White* for International Agricultural Corporation; *H. G. Leiding* for H. G. Leiding Company; *F. A. Halstead* for W. R. Grace & Company; *R. L. Rogers* for Swift & Company; *Thomas E. Grady* and *E. B. Gaines* for City of Savannah and Savannah Traffic Bureau, Incorporated; *John P. Kavanagh* for E. I. du Pont de Nemours & Company; *T. A. Bosley* for A. T. Vanderbilt and George C. Wilson, receivers for Virginia-Carolina Chemical Company; *F. B. Porter* for Southern Agricultural Chemical Corporation, Tennessee Copper & Chemical Corporation, and Capital Fertilizer Company; *H. J. Wagner* and *A. G. King* for Norfolk Port Commission; *D. A. Dashiell* and *C. J. Collins* for F. S. Royster Guano Company; *A. J. Whitman* for American Agricultural Chemical Corporation; *Wm. Edwards* for Pyrites Company, Limited; *Clark & LaRoe*, *F. E. Brown*, *Fred Juenger*, and *C. N. McNulty* for Texas-Gulf Sulphur Company; *Thomas J. Burke* for Port Utili-

¹ This report also embraces Investigation and Suspension Docket No. 2141, Definition of Term "Handling" at Virginia, South Atlantic, and Gulf Ports.

ties Commission of Charleston; *J. A. Banks* for Municipal Docks & Terminals of Jacksonville; and *Thos. D. Guthrie* for City of Jacksonville and Jacksonville Traffic Bureau, Incorporated.

REPORT OF THE COMMISSION

BY THE COMMISSION:

These cases present related issues. They were heard and argued together and will be disposed of in one report.

In the schedules under suspension in No. 2101, which were filed to become effective May 1, 1924, it is proposed to reduce the charges for handling fertilizer and fertilizer materials, cement, and salt between ship side and cars, ship side and storage, and storage and cars, respectively, at south Atlantic ports, and Gulf ports in Louisiana and east thereof except Gulfport, Miss., from 50 cents to 30 cents per net ton.²

In the schedules under suspension in No. 2141, which were filed to become effective June 5, 1924, it is proposed to change the rule which defines the term handling, quoted below, by adding thereto the part indicated as section B, and especially note 2 thereof.

DEFINITION OF THE TERM "HANDLING."

SECTION A.

Applicable at Mobile, Ala., Pascagoula, Miss., and Pensacola, Fla., only.

The term "handling" as used herein means the physical handling or movement of traffic between cars and shipside (including carriers' barges), or between cars or shipside (including carriers' barges), and storage (Note), and between storage (Note) and shipside (including carriers' barges) or cars, and does not include marking services.

Note: Storage space or warehouses must be located on properties of the line performing the handling service.

SECTION B.

Applicable at all ports, except Mobile, Ala., Pascagoula, Miss., and Pensacola, Fla.

The term "handling" as used herein means the physical handling or movement of traffic between cars and storage (see Note 1 below); between storage (see Note 1 below) and shipside (including carriers' barges) or between cars and shipside (including carriers' barges) (see Note 2 below), and does not include marking or weighing services.

Note 1.—Storage space or warehouses must be located on properties of the lines performing the handling service.

Note 2.—Does not apply on traffic loaded on or unloaded from open top cars placed at shipside on marginal tracks by ship's tackle or crane direct

² At certain Gulf ports the "handling" charge includes a wharfage charge of 20 cents per net ton and at these ports the reduction is therefore from 70 cents to 50 cents per net ton.

without any other intervening agency or facility, and without expense to carrier. The handling charges published in tariff or supplements will be assessed on traffic loaded on or unloaded from box cars placed on marginal tracks.

By voluntary action of the carriers the effective dates of all the suspended schedules have been postponed until February 2, 1925.

The reduction proposed in No. 2101 is supported by shippers whose traffic would be affected thereby and opposed by operators of municipal and privately operated public terminals at the ports affected, hereinafter referred to as the public terminals, and by the United States War Department and the United States Shipping Board.

The change in the definition of the term "handling" proposed in No. 2141 is supported by operators of public terminals, and opposed by shippers of fertilizers and fertilizer materials, crude sulphur, and iron pyrites.

NO. 2101

While the proposed handling charges are published for general application at the south Atlantic and Gulf ports hereinbefore indicated it appears that the only port at which the railroads are to any considerable extent operating water terminals is Savannah, Ga. The Seaboard Air Line and the Central of Georgia operate extensive terminals at this port. At the other ports the terminals are operated by either the municipalities or private interests, the properties operated by the latter in many instances being leased from the carriers.

The present handling charges are the result of increases made in 1921. The increases at the south Atlantic and Gulf ports east of New Orleans were protested but became effective without suspension. The increases proposed at New Orleans and ports within the New Orleans district were suspended by us but were later approved with certain exceptions in *Handling Charges at Louisiana Ports*, 61 I. C. C. 379. At the south Atlantic ports and at the Gulf ports other than Gulfport and New Orleans and its district ports a separate charge is provided for wharfage in addition to the handling charge.

The handling charges under consideration are in issue in *Wharfage Charges at South Atlantic and Gulf Ports*, 93 I. C. C. 609, in which a report is issued concurrently with this.

The principal reason advanced by respondents for the proposed reduction is that the present charges are so high that they have resulted in practices by shippers which obviate the necessity for railroad handling of the commodities in question and that this has resulted in a heavy loss of revenue. These practices consist of the handling of traffic by shippers' representatives direct from ship to

cars placed on so-called marginal tracks, which are tracks located along the edge of the pier within reach of ship's tackle; and the unloading of cargoes at private manufacturing plants having water frontage instead of over railroad facilities. By resort to one or the other of these methods shippers secure, at a cost to them of 20 cents per net ton or less, substantially the same handling service as offered by respondents. On such tonnage as is now handled over the marginal tracks respondents lose the handling revenue, and on that handled over the privately owned facilities they lose not only the handling revenue but also the wharfage, and perhaps storage, charges.

Respondents do not contend that the proposed charges are upon a maximum reasonable basis but insist that they will produce revenue in excess of the out-of-pocket cost of the service, and will, they have been assured by the shippers, result in a return to the railroad terminals of much business which is now lost to them. The fertilizer interests state that while the handling charges which they are at present able to avail themselves of are less than those proposed by the carriers, the handling of the business over the marginal tracks and through the private facilities results in collateral expenses and inconveniences which probably would make it to their interest to have the traffic handled over the railroad terminals if the charge is reduced as proposed.

The principal points urged by those representing the public terminals is that their business is one which it is the declared policy of the Federal Government to foster and encourage; that in order to continue to participate in the business their charges must be no higher than those of the railroads for similar services; that the proposed handling charges are not only lower than the costs of the services on their facilities, so that to meet them will entail heavy losses, but also are lower than the cost of the services to the carriers and will result in burdening other traffic and that the reductions on the particular commodities in question without a similar change on other commodities will result in unlawful discrimination. In addition they refer to various other considerations such as the ethics of the carriers in bringing about reductions of terminal charges after having to a large extent gotten out of the terminal business, a contemplated increase in the transportation rates on certain commodities in the South, and the apprehension that the proposed reductions may bring requests for other rate increases; and the fact that in connection with ship-side rates the carriers absorb the terminal charges published in the tariffs so that a reduction in the terminal charges will result in a lesser absorption by the carriers and a corresponding increase in their revenues.

While it is true that the Congress has expressed a policy looking to the development of public terminals at port cities, it has not dele-

gated to us authority to enforce that policy. The scope of our activities is limited by the terms of the interstate commerce act. It follows that unless the proposed charges are found to be in contravention of some provision of that act it is beyond our power to condemn them. The protestants are active competitors of the carriers for terminal business and under the law as it now stands the carriers are under no obligation to make their charges with a view to insuring a profit upon the operations of other public terminals. Nor does it seem to us to have been contemplated that a policy of developing public terminals at port cities is to be carried out by imposing unnecessary expense upon shippers and traffic, which would defeat a policy of real terminal improvement.

The proposed charge is not unreasonably high. Neither do we find any warrant for holding that it is unduly prejudicial. It is published for uniform application upon the commodities in question and no shipper is here complaining. The fact that reductions are proposed on only three commodities does not establish undue prejudice. While 50 cents per net ton is the handling charge applicable in connection with a number of commodities it is by no means universal in its application. The present handling charge on meal and cake made from cottonseed, flaxseed, and different varieties of beans is 30 cents. Different handling charges are published on various other commodities, some upon a weight and others upon a package basis.

Reference is made to the fact that we approved increases in handling charges generally at New Orleans in *Handling Charges at Louisiana Ports, supra*, and in the handling charge on shingles at south Atlantic and Gulf ports in *Handling Charges on Shingles*, 89 I. C. C. 641. It does not follow that a lower basis of charges would have been unlawful.

We have repeatedly held that the carriers may, subject to certain restrictions, initiate rates lower than we may prescribe. The question is as to whether or not in this instance they are proposing to go to such lengths in attempting to meet competition and attract business that the resulting charges will be so low as to create a burden upon other traffic. In this connection cost figures have been submitted which, although tending to show that the proposed charges will probably not cover all costs if cost is to be ascertained by distributing all burdens over all traffic, do indicate that they will produce considerable return in excess of the direct out-of-pocket costs of the services. Whether the proposed reduction will result in a sufficient increase in business to more than offset the loss in revenue which it would entail on the amount of business which would be handled whether the reduction is made or not is of course a question

to which only actual operation under the reduced charge can furnish a satisfactory answer. In our judgment respondents have sufficiently justified the proposed reduction, and we so find.

NO. 2141

The proposal to add a new section to the rule defining the service which respondents will furnish under the present or proposed handling charges, apparently grows out of the belief that the present rule would not authorize the collection of the charge for handling services rendered by respondents in transferring shipments between the interior of closed cars standing on marginal tracks and the point at which the shipments are deposited or received by ship's tackle. We do not construe the present rule as susceptible of such a restricted interpretation. It states that the term handling means the "physical handling or movement of traffic between cars and ship-side" and does not make the application of this definition conditional upon the cars standing on other than marginal tracks. The proposed new section, while it does not change the substance of the rule, at least in so far as handling between ship side and box cars is concerned, tends perhaps to clarify its application in this connection, and it also makes clear that no charge will be assessed in connection with shipments transferred by ship's tackle to or from open-top cars standing on marginal tracks at ship side. As the proposed rule neither increases nor decreases the charges which respondents are authorized to collect for service rendered by them under the existing schedules we shall permit it to become effective.

An appropriate order will be entered.

COMMISSIONER EASTMAN concurs in the result.

93 I. C. C.

No. 12066

CONSTRUCTION AND REPAIR OF RAILWAY EQUIPMENT

ERIE RAILROAD COMPANY

Submitted July 1, 1924. Decided December 9, 1924

Upon investigation, found—

1. That the cost of repairs to locomotives and cars of the respondent, Erie Railroad Company, at outside shops during 1920, 1921, 1922, and 1923, was greatly in excess of the cost of similar work in respondent's own shops.
2. That a large part of such excess cost was an unreasonable expenditure for maintenance of equipment, and not in the interest of efficient and economical management as required by section 15a of the act.

Marion B. Pierce and H. A. Taylor for Erie Railroad Company.

REPORT OF THE COMMISSION

BY THE COMMISSION :

This is an investigation instituted upon our own motion under section 15a of the act to determine whether common carriers by railroad subject to the interstate commerce act have paid, or are paying, excessive amounts for the repair of their locomotives or other equipment at construction or repair shops other than their own, as compared with costs for similar work in their own shops, in disregard of efficient and economical management, resulting in unreasonable expenditures, or otherwise contrary to law. Hearings have been had with reference to repairs to locomotives and cars of the Erie Railroad Company, hereinafter referred to as respondent, and this report relates only to that matter. On April 15, 1924, the order was amended so as to broaden the inquiry into matters relating to the repair and operation of respondent's marine department. This latter feature of the investigation will be dealt with in a subsequent report.

Prior to the hearings our investigators made an examination of respondent's records, together with the pertinent records of the United States Railroad Administration and of this commission. The record comprises the evidence submitted by them and by respondent. The classification of repairs to locomotives hereinafter mentioned is known as the United States standard classification and is described in the margin of our report in the *Pennsylvania*

Railroad Company case, 66 I. C. C. 694. The term respondent is also used to refer to the Erie system lines.

On August 9, 1920, respondent entered into a contract with the Baldwin Locomotive Works for the repair of locomotives on a cost-plus basis, that is, the cost of material at stipulated prices, and of direct labor, plus 120 per cent of the direct labor cost to cover overhead expense, plus 15 per cent of the whole for profit. All scrap material became the property of the Baldwin plant, and respondent bore all freight charges on materials and on the repaired locomotives as well as the costs of inspection. The eight locomotives repaired under this contract went into the Baldwin shop on various dates between October 2 and November 11, 1920, and were turned out on various dates between February 9 and May 4, 1921.

The total cost of repairs on these eight locomotives, inclusive of freight charges and cost of inspection, amounted to \$267,395.59. Compared with the cost of substantially similar repairs on the same class of locomotives in respondent's shops, the total excess cost of the contract repairs was \$172,361.23. In making comparisons consideration was given to the relative extent of repairs and, with one exception for which allowance was made, the locomotives repaired in respondent's shops received repairs comparable to those in the Baldwin plant. The items of cost in respondent's shops are labor and material, inclusive of shop and store expense, but including no other overhead expense, as respondent's overhead, other than store and shop expense, would not be materially affected by the number of locomotives repaired in respondent's shops.

Respondent contends that under the circumstances the repair of these locomotives at Baldwin's was necessary and did not result in unreasonable expenditures, although the cost was more than it would have been under normal conditions in its own shops. It states that the general run-down condition of its motive power, and the increasing demand for power due to the heavy movement of traffic were the two factors which contributed principally to the necessity for outside repairs.

Respondent states that the condition of its locomotives, which were barely sufficient for its needs, had progressively deteriorated during Federal control. An exhibit tabulates, at the end of each month of the period covered, the estimated further available service of its motive power before class repairs should be necessary. According to this exhibit, on July 31, 1918, respondent's locomotives were available for a total of 11,365 months service; on July 31, 1919, a total of 10,802 months; and on July 31, 1920, just prior to making the contract, 9,183 months. These computations, however, were estimates

and no data were submitted showing the actual service obtained. Respondent states that during the spring and summer of 1920 its shops were utilized to capacity on an eight-hour day basis, and that its shop forces were increased. In February, 1920, there were 9,899 employees in its locomotive-repair department, 10,271 in August, 1920, and 10,749 in November of that year. The shop output for 1920 was 1,094 classified repairs as compared with 1,048 in 1919, although somewhat heavier repairs were made during 1919.

Respondent's traffic increased materially in the spring and summer of 1920, the peak being reached in August. Respondent states that during July and August it was compelled to embargo carload traffic at certain points on its line, but it appears that this embargo was not due to the condition of its motive power. It is to be noted, however, that in January, 1921, after the slump in business, respondent stored in serviceable condition about 10 per cent of its locomotives, about 16 per cent in April, and about 18 per cent in May, 1921. Respondent felt that outside repairs were necessary, and opened negotiations with the Baldwin company resulting in the above-mentioned contract. Five of the eight locomotives, however, were not delivered to the Baldwin company until the early part of November, about the time of the marked decline in traffic which occurred in November and December, 1920. None of the eight locomotives were returned until in the spring of 1921, after the demand for power had decreased approximately 25 per cent.

The class repairs in respondent's shops on an eight-hour day basis averaged about 90 per month during 1920. Respondent concedes that it could have repaired these eight locomotives if its shops had been on a nine-hour basis, but asserts that if the work had been done at overtime rates the cost would have been very little under the contract cost. Our investigators, however, compute that the eight locomotives could have been repaired entirely at overtime rates in respondent's shops at an additional cost of only \$30,037.91, whereas the excess cost at the Baldwin plant was \$172,361.23. The evidence justifies the conclusion that the eight locomotives could have been repaired in the company's shops at a cost materially less than was paid for repairs at the Baldwin plant and would have been available for service much sooner.

The contract between the Baldwin company and respondent was modified February 17, 1921, by reducing the overhead from 120 to 90 per cent, as well as the stipulated prices on certain materials. Under the modified contract three locomotives were repaired with a guaranty that the cost per locomotive would not exceed \$65,000. At the time of the investigation the repair cost on one locomotive

only was available, and no similar comparative cost data were prepared by our representatives respecting the repair of these three locomotives.

On May 14, 1921, respondent purchased 45 so-called Russian decapod locomotives which were in need of repairs to render them serviceable. These locomotives were repaired at the Baldwin plant during the months of June, July, and August, 1921, under the modified contract of February 17, 1921, at a total cost of \$304,466.17. In making a comparison with the cost of like repairs to similar locomotives, respondent uses a cost of \$6,279.50 per locomotive, while our representatives show such cost as \$5,785.86. Respondent, however, erred in eliminating a locomotive used for comparative purposes which received classified repairs in an engine house. Our representatives erred as to an item of back pay, respondent's data as to this item being more nearly correct. Making comparisons on this corrected basis, the excess cost on the 45 locomotives would be \$35,177.70.

While these 45 locomotives were undergoing repairs at the Baldwin plant, several of respondent's shops were shut down for periods ranging from two to three months. Respondent had 13 shops where classified repairs were performed, the largest being the Susquehanna with a monthly capacity of 23 locomotives, Meadville with 21, Hornell with 18, Jersey City with 15, and Huntington with 9. During the first eight months of 1921 the Meadville, Susquehanna, Hornell, Galion, and Huntington shops were shut down for certain periods and worked only part time during other periods. During 1919 and 1920 respondent's output of classified repairs averaged approximately 90 locomotives per month. During the period January to July, 1921, inclusive, due to the drastic reduction in forces, its output of classified repairs fluctuated between 41 and 69 per month, and averaged only 53 per month. During the last four months of 1921 the output, although greater than the first part of the year, was still approximately 30 repairs less per month than during 1919 and 1920. Based on the performance during 1919 and 1920, respondent's shops were operated at only 65 per cent of their capacity during 1921.

The chief reason advanced for these repairs in outside shops was the financial condition of respondent at that time. The contract with the Baldwin company provided for payment in monthly installments with interest. Respondent concedes that it could have repaired the 45 locomotives if all its shops had been operating, but states that, due to business depression, it was forced to curtail its expenses and close several shops. Respondent could have made a substantial saving by performing these repairs in its own shops,

and in the interest of efficiency and economy in operation it should have avoided such excess expenditures.

On October 25, 1923, this proceeding was reopened as to respondent's locomotive equipment and on February 11, 1924, as to all of its equipment. A further hearing was had with respect to repairs to locomotives and cars made during the latter part of 1921, 1922, and part of 1923. During this period there were 213 locomotives repaired in outside shops, 106 of which received classified repairs, and 107 unclassified repairs. Written contracts were made with 16 shops. Repairs were also made in three other shops without written contracts. Two of the contracts were made prior to the shopmen's strike of July 1, 1922, and the remainder subsequent thereto.

Although its shops during 1921 were operating at only about 65 per cent capacity, respondent entered into a contract on October 1, 1921, with the Lima Locomotive Works covering the repairs to 10 Santa Fe type locomotives. The contract did not provide for a definite price, and, as the costs for repairs amounted to a greater sum than was anticipated, only five locomotives were repaired at that plant. On May 3, 1922, respondent made a contract with the Baldwin Locomotive Works for repairs to the other five Santa Fe type locomotives at stipulated prices.

Respondent owned 60 large Santa Fe type locomotives, which were purchased in 1916 and 1917. It states that its shops were not large enough to repair these large locomotives and it was necessary to have them repaired at outside shops. While respondent has since remodeled certain of its shops to take care of such locomotives, it appears that its corporate officers knew of the incapacity of the company shops during the interval of five years subsequent to the purchase of these locomotives. Moreover, it appears that the repairs to the Santa Fe type locomotives could have been made in its Hornell shop if the smaller locomotives had been transferred from that shop to other shops on its lines. The practice followed could not be said to make for efficiency and economy in management.

Most of the contracts subsequent to July 1, 1922, the date of the so-called shopmen's strike, were on a cost-plus basis. Three locomotives were sent to the American Locomotive Company and seven locomotives to the Baldwin company during July and August, before the execution of any contracts. The first contract executed subsequent to the strike was with the Baldwin Locomotive Works on August 10, 1922. Contracts were also entered into during August with the McMyler-Interstate Company of Cleveland, Ohio, Ferguson Allan Company of Buffalo, N. Y., Crucible Steel Company of Harrison, N. J., and the American Locomotive Company of Schenectady,

N. Y. The contract with the American plant provided that a flat price should be made after the inspection of the locomotive. No definite number of locomotives was specified. The four other contracts were on a cost-plus basis. The contract with McMyler-Interstate Company, covering not less than 50 locomotives, provided for the cost of material, cost of productive labor, plus 200 per cent of direct labor cost for overhead, plus 25 per cent of total labor and overhead cost and 15 per cent of material cost for profit, and, in addition, a placing charge of \$300 per locomotive was made; with the Ferguson Allan for cost of direct labor, plus 80 per cent for overhead, plus 15 per cent of direct labor and overhead for profit; and with the Crucible Steel Company for the cost of material, cost of applied labor plus 125 per cent for indirect labor, plus 100 per cent of applied labor and indirect labor for overhead, plus 10 per cent of total applied and indirect labor, overhead, and material costs for profit. Respondent agreed to give the Ferguson Allan Company a minimum work of \$50,000 for the first six months, and \$25,000 for the second six months, and to give the Crucible Steel Company repairs to 200 locomotives at a total cost of not less than \$2,000,000. It is to be noted that there is a striking variation of the overhead costs in the contracts made about the same time.

Two contracts were made in September, 1922, one with the Austin Machinery Company of Muskegon, Mich., on September 5, for repairs to not less than 50 locomotives, and one with the Buffalo Machine & Iron Corporation on September 18, for a minimum of eight locomotives per month for six months. The Austin Machinery contract provided for the cost of repairs to be determined by the cost of productive labor plus 200 per cent for overhead, plus 25 per cent of labor and overhead as profit, and cost of material plus 10 per cent; the contract with the Buffalo company by the cost of material plus 10 per cent, cost of direct labor, plus 90 per cent for overhead, plus 10 per cent of labor and overhead for profit. An arrangement for repairs was made with Staten Island Shipbuilding Company during the latter part of September. The written contract executed October 25, 1922, provided for repairs at the cost of applied labor plus 110 per cent and cost plus 25 per cent of the material supplied by builder, and 15 per cent of the value of the material furnished by respondent. Two contracts on a cost-plus basis were made in November, one with J. P. Devine Company of Buffalo, N. Y., to cover two locomotives sent to its shop in October, and one with American District Steam Company to cover cost of repairs to a locomotive sent to its shop in October.

In all of the above contracts respondent paid the cost of inspection as well as the freight charges both on material it furnished and on the locomotive. In several instances, such as the arrangements with the Ferguson Allan Company, Buffalo Machine & Iron Corporation, the Devine Company, and the American District Steam Company, the contract provided that if the contractor furnished the materials he would receive payment therefor on basis of cost plus 10 per cent.

The percentage additions under various contracts to productive or applied labor obviously resulted in costs greatly in excess of those in respondent's shops. The Crucible contract, the most striking in this respect, contemplated a percentage addition to the applied or productive labor for indirect labor, overhead and profit of 395 per cent; McMyler-Interstate, of 275 per cent; and Austin Machinery Company, of 275 per cent. In other words, for every dollar of productive labor applied, respondent paid \$4.95 to the Crucible company, \$3.75 to McMyler-Interstate, and \$3.75 to the Austin company. The total cost of applied or productive labor on 12 locomotives repaired at the Crucible plant was \$144,359.74, and the amount added to productive labor for indirect labor, overhead, and profit was \$570,220.96; the cost of productive labor on 11 locomotives at the McMyler-Interstate plant was \$81,294.65, and the amount added for overhead and profit, \$223,560.29; the cost of productive labor on nine locomotives at the Austin Machinery plant was \$57,667.20, and the amount added for overhead and profit, \$158,584.80. The material used by respondent in the repair of locomotives in its shops averaged 36.9 per cent of the total cost of labor and material, while the material used in the contract shops averaged a much lower percentage of the total cost, being as low as 6.3 per cent in the case of the repairs at the Crucible plant.

The total amount paid for classified repairs on the 106 locomotives was \$3,157,500.60, including \$199,000 for the cancellation of two contracts. The cost of repairing 92 of these locomotives in outside shops was compared with the cost of like repairs to similar locomotives in respondent's shops during the same period. No comparative cost study was made respecting the five locomotives receiving class 1 repairs at the Lima plant and the nine at the Baldwin plant, as no similar repairs were made in respondent's shops during the same period. In arriving at the cost of repairs in outside shops we used the contractor's total invoice, which included materials, labor, and the percentage additions, and to this sum added the cost of materials furnished by respondent, freight on the locomotive, the costs of inspection, and in two instances payments for cancellations. The applied labor in the contract costs includes only the direct physical

labor of the men doing the work and does not include superintendence. In computing the cost of repairs to locomotives in respondent's shops we used the cost of labor including shop expenses, and the cost of materials including store expenses. The shop and store expenses included cleaning and handling material, power, heat, lights, etc. The freight charges on the material to the storehouse are included in the company costs. No overhead, however, was added for taxes, depreciation, maintenance, or interest on investment, as such charges would not have increased had the additional locomotives been repaired in respondent's shops, but the allocation per locomotive would have been reduced. A comparison on this basis is proper, as respondent would have saved the excess costs if the repairs had been made in its own shops and its own overhead expense was in no wise diminished by turning these repairs to outside shops.

The total cost for repairs to the 92 locomotives at outside shops was \$2,820,281.60, while the cost of substantially similar repairs on the same class of locomotives in respondent's shops was \$642,705.54. The total cost in the outside shops was about 438 per cent of the cost of performing the same work in respondent's shops. The total excess above the cost of similar work in respondent's shops is computed to be \$2,177,576.06, and this amount would have been saved had respondent performed the work. There is no uniformity in the amount of excess per locomotive in the different shops, which ranges from \$4,268.02 at the Devine plant to \$78,172.12 at the Crucible plant, but the average excess was \$23,669.30 per locomotive.

The average cost of repairs in the various shops is compared below with the average cost in respondent's shops:

Name of shop	Number of locomotives	Average cost per locomotive		Average excess cost per locomotive	Total excess	Ratio of average cost in outside shop to average in respondent's shops
		Outside shops	Respondent's shops			
						<i>Per cent</i>
Crucible Company.....	12	\$64,857.76	\$8,314.25	\$56,543.51	\$678,522.08	780
Baldwin Works.....	36	17,823.41	8,241.28	9,582.13	344,956.51	216
Buffalo Corporation.....	5	31,577.73	6,850.77	24,726.96	123,634.80	460
Staten Island Company.....	6	34,714.04	4,724.16	29,989.88	179,939.32	714
Ferguson Allan.....	4	17,122.29	4,890.76	12,231.53	48,926.13	350
American Company.....	6	17,990.49	4,358.41	13,632.08	81,792.51	412
McMyler-Interstate ¹	11	43,323.81	6,377.65	36,946.16	406,407.76	679
Austin Company ²	9	38,729.44	6,377.65	32,351.79	291,166.11	667
Devine Company.....	2	8,495.95	4,227.93	4,268.02	8,536.04	200
American District Steam.....	1	15,622.02	1,927.22	13,694.80	13,694.80	815

¹ \$82,000 penalty payment included.

² \$117,000 penalty payment included.

As stated, nine locomotives received class 1 repairs at the Baldwin plant at a total cost of \$211,496.64, or an average of \$23,499.62 per locomotive, on which the excess cost was not computed. Assuming that the average excess cost of repairs to these locomotives was equal to the average excess cost on the other 36 repaired in the same plant, the total excess cost on the nine would be \$86,239.17. No comparative cost study was made respecting the five locomotives which received class 1 repairs at Lima at a cost of \$125,722.36, or an average of \$25,144.17. This cost was somewhat greater than for like work on similar locomotives at the Baldwin plant where the average was \$23,449.62 per locomotive, but assuming the same excess per locomotive the total excess cost for the five would be \$47,910.65. Adding these assumed figures to the total proven excess on the 92 locomotives, there would be a total excess expenditure on the 106 locomotives above the cost for similar work in respondent's shops of \$2,311,725.83 out of a total payment for classified repairs of \$3,157,500.60.

The cost of repairs to many of the locomotives was greatly in excess of the cost of similar new locomotives. The table below, compiled from data furnished by the respondent, compares the cost of repairs at the Crucible plant with the original cost of the locomotive and the reproduction cost new of a similar locomotive. The reproduction cost new of a similar locomotive is given only for the purpose of comparing it with the cost of repairs.

Locomotive number	Cost of repairs ¹	Original cost ²	Reproduction cost new of similar locomotives
N. Y., S. & W. 34	\$71,254.94	\$7,871.14	\$27,009.00
Erie 812	48,616.43	7,580.71	28,317.60
Erie 823	52,900.36	8,722.61	28,317.60
Erie 912	63,371.59	16,571.22	35,424.00
Erie 923	63,687.32	15,821.25	37,692.00
Erie 1625	83,134.50	21,440.63	41,378.00
Erie 1847	62,896.51	15,608.79	39,015.00
Erie 1866	65,138.77	15,617.29	37,672.00
Erie 1875	51,507.63	15,608.79	39,015.00
Erie 1881	63,394.23	15,880.99	39,015.00
Erie 2014	65,007.90	18,598.27	39,236.00
Erie 2527	86,162.91	20,546.77	45,424.80
Average	64,857.76	14,739.04	36,459.66

¹ Includes cost of inspection and freight charges.

² Includes additions and betterments.

As stated, the above locomotives were repaired at the Crucible plant under a cost-plus contract providing for the cost of direct labor plus 395 per cent of direct labor for indirect labor, overhead, and profit. The contract also provided that respondent would fur-

nish the Crucible company 200 locomotives to be repaired under such terms, but apparently only 12 were repaired. It is to be noted that the total cost of repairs to the above 12 locomotives was \$775,293.12, or \$340,777.20 in excess of the total reproduction cost new of 12 similar locomotives, and was equivalent to the reproduction cost new of 21 similar locomotives. It is also observed that in one instance the cost of repairs was almost three times, and in several instances almost twice, the reproduction cost of a similar new locomotive.

In many other instances the cost of repairs exceeded the reproduction cost new of a like locomotive. The total cost of the six locomotives repaired at the Staten Island Shipbuilding plant was \$213,604.25, while the reproduction cost new of similar locomotives was \$183,257.60; the total cost of repairs to nine of the 11 locomotives repaired at the McMyler-Interstate plant was \$404,432.61, while the reproduction cost new of similar locomotives was \$354,552; the total cost of four of the nine locomotives repaired at the Austin Machinery plant was \$170,775.72, while the reproduction cost new was \$154,496.

As hereinbefore stated, several of the contracts provided for the repair of a stipulated number of locomotives or for a stipulated amount of work. On January 26, 1923, respondent's executive committee approved settlements for the cancellation of unperformed work under these contracts. Only 11 locomotives were repaired under the McMyler-Interstate contract, which provided for the repair of 50 locomotives. This contract was canceled by the payment of \$117,000. Under the Austin contract, nine locomotives were repaired, and a payment of \$82,000 was made in adjustment of the contract as to the remaining 41 locomotives. Respondent states that no money payments were made to terminate the other contracts.

In addition to the contracts for classified repairs, contracts for unclassified repairs to locomotives and cars were made during August and September, 1922, with Clark Tools Company of Belmont, N. Y., Universal Shops of Horseheads, N. Y., Spillman Engineering Corporation of North Tonawanda, N. Y., and with McGill & Holford Manufacturing Company of Binghamton, N. Y. Two of the contractors, who performed classified repairs, the Ferguson Allan Company and the American Locomotive Company, also made unclassified repairs under the terms of the contracts previously referred to. The Crucible Steel Company dismantled a locomotive which was found to be in such condition that it was scrapped. The cost for performing this work was \$5,088.81. The Ramapo Iron Works, the Standard Tank Car Company, and the Hudson Shipbuilding & Repair Company performed unclassified repairs without

written contracts. A total of 107 locomotives received unclassified repairs in the above outside shops at a total cost of \$214,195.87, or an average cost of \$2,001.83 per locomotive.

No attempt was made by our investigators to check the costs for unclassified repairs, except those performed by the Hudson Shipbuilding & Repair Company. During the period July, 1922, to January, 1923, this company repaired 52 of the 107 locomotives receiving unclassified repairs at outside shops at a total cost of \$88,291.40. This amount includes labor and that part of the materials furnished by the Hudson company. The cost of materials furnished by respondent was not available. This was the first locomotive-repair work done by this contractor and it had no facilities for that purpose other than small machine shops.

While the Hudson company paid its employees lower rates, respondent was assessed, according to the agreement, labor-board rates, plus 70 per cent, plus 10 per cent. There were apparent irregularities on substantially all bills. Employees of a certain class, for instance painters, were shown as performing repairs when no work of that nature was done. The chief irregularity, however, was the charging of excessive time for performing the repairs. The time was kept by foremen for the Hudson company, and the time records of the Hudson company, from which the bills were rendered, could not be obtained. The Hudson company asserts that they were destroyed by fire. While respondent's witness testifies that an inspector checked the time and work performed, the record indicates a check was not made of all work, and that, in certain instances at least, respondent paid bills without such check. The method of inspection and verifying the work performed was not the usual railroad practice. Respondent's inspector for 50 of the locomotives was not familiar with the repair of locomotives. The official approving the actual work performed apparently had no knowledge of the hours of work charged.

Of the total of 52 locomotives repaired at the Hudson plant, 32 cost approximately \$86,000, the other 20 receiving very light repairs. As these unclassified repairs vary in cost and character, and are not comparable with other unclassified repairs, it was not possible to make a comparison with costs of like repairs in respondent's shops, as in the case of classified repairs. Our investigators, therefore, computed the time necessary to perform each particular item of repair, using respondent's piecework schedules as a basis. To only 13 locomotives was the list of repairs sufficiently definite to permit with reasonable accuracy the approximation of the number of hours such repairs would, under the existing conditions, require.

The number of hours charged by the Hudson company for repairing these 13 locomotives, exclusive of welders' and foremen's time, was 16,801. The maximum hours of labor required to make the repairs, based on respondent's piecework schedules, should not have exceeded 2,268. In other words, the number of hours charged was over seven times greater than should have been required. Respondent introduced no testimony to refute this computation. The labor cost was 79.5 per cent of the total cost of repairs to the 13 locomotives, and, assuming the same percentage existed as to the repairs for the 52 locomotives, the total labor cost was \$70,191.66 out of a total for labor and materials of \$88,291.40. Applying the ratio of hours of labor charged to hours ordinarily required, the total labor charge should not have exceeded \$9,471.84, or an excess labor cost for the 52 locomotives of \$60,719.82.

The Hudson company also repaired 144 freight cars for respondent. Our investigators made a comparison of the labor charges, exclusive of painting, by the Hudson company for repairs to 30 of these cars with the cost of similar repairs at 1922 American Railway Association prices. The American Railway Association code of prices specifically states the number of hours of labor at a specific rate per hour for over 500 separate items of repair that may be charged by one carrier for making repairs to freight cars belonging to another carrier or private-car owner. The labor charge by the Hudson company for repairing the 30 cars was \$28,869.80, while the American Railway Association 1922 prices for similar repairs, at \$1.20 per hour, plus 10 per cent, would have been \$6,824.97. In other words, the repair of the freight cars at the contract shop averaged \$962.32 per car, whereas it would have cost not to exceed \$227.46 in respondent's shops or in other railroad shops at American Railway Association prices.

Respondent states that the contracts subsequent to July 1, 1922, were the direct result of the shopmen's strike. It states that, after failing in an attempt to make an individual settlement with its men, it manned its shops in the best possible manner; that the output of its shops would not take care of the increasing demand for power; that the supply of serviceable power was diminishing; and that it investigated every outside shop on its line that possessed a potential power of making repairs, and induced these shops to enter into contracts for repairing its equipment.

None of these contractors, except the Baldwin, American, and Lima companies, had repaired locomotives. The Baldwin and American plants were better equipped to perform repair work but were said to be unable to accept all the repair work offered at that

time by the various carriers. Respondent states that new locomotives were not available; that it was necessary to furnish an uninterrupted flow of transportation; and that the management considered no expense too great to maintain transportation. Respondent made a settlement with its striking shopmen as of September 28, 1922.

Of the 96 locomotives sent by respondent to outside shops after July 1, 1922, three went out during July, 44 during August and the first half of September, 20 during the latter part of September, and 29 subsequent to October 1. It is to be noted that several of these locomotives had been out of service since the early part of 1922. Past experience had shown respondent that it could not get repairs done as quickly in outside shops as in its own. None of the locomotives were turned out of shop and delivered to respondent until after the end of the strike; 2 were delivered in October, 5 in November, 19 in December, 13 in January, 19 in February, 15 in March, 14 in April, 5 in May, 3 in June, and 1 in July. Of the 106 locomotives repaired, 37 were stored in serviceable condition shortly after their return from the repair shop for several months, and several were still in storage on December 31, 1923. Respondent states that it handled a large volume of business during the next few months due to conditions on other roads, and that its employees not only made the normal repairs but performed their work so efficiently that it was able to store in serviceable condition in the summer of 1923 over 200 locomotives.

Clearly, economy and efficiency of operation were disregarded in making new contracts and in sending out additional locomotives while negotiations were being conducted for a final settlement with its striking employees during the latter part of September. Negotiations were concluded during the latter part of the month and the strike terminated effective September 28, 1922. However, during the last half of September, respondent made new contracts and sent out 20 locomotives to outside shops for repairs. Two locomotives went to the McMyler-Interstate plant on September 27; seven to the Baldwin plant during the latter part of September; and the first five under the Austin Machinery Company contract on September 18 and 20. The first three locomotives repaired at the Staten Island plant were delivered on September 18 and the two others on September 24. Arrangements were apparently made with this concern on the first-named date, as the written contract was dated October 25, 1922. The contract with the Buffalo Machine & Iron Corporation was not executed until September 18, and the first locomotive went to its shop on September 28, 1922.

Although the strike was settled as of September 28, 1922, and respondent's employees returned to work, respondent continued to pay excessive amounts for repairs to its locomotives in outside shops even though it could have employed almost an unlimited number of skilled workers. Subsequent to October 1, 1922, 29 locomotives were sent to outside shops for classified repairs, and certain additional contracts were entered into. Respondent states, however, that it desired its equipment to be repaired as soon as possible, and that it felt morally obligated to send further repairs to the contract shops. The contract with the Devine plant was not made until November to cover two locomotives that went into that plant on October 12 and 17; and all four locomotives under the Ferguson Allan contract were delivered to that shop during October and November. The one locomotive repaired by the American District Steam Company was delivered to it on October 12, and the written contract was not made until November.

During October, 17 locomotives were sent to, and received classified repairs in, outside shops at a total cost of \$445,897.88, while the cost of performing like repairs to similar locomotives in respondent's shops was \$95,181.56, or an excess cost of \$348,716.32. During November and February, 12 locomotives were sent out and received classified repairs at a total cost of \$492,679.80, while the cost in respondent's shops for similar work was \$99,461.23, or an excess cost of \$393,218.57. Thus the total excess cost for classified repairs on the 29 locomotives sent out after October 1 was \$741,934.89.

Our criticism here is not directed to the fact that the equipment was sent to outside shops, but to the unreasonable and excessive costs for such repairs at such shops. Clearly, the excessive costs for repairs on those locomotives sent to outside shops prior to July 1, 1922, and subsequent to September 15, 1922, were not incurred in the interest of efficient and economical management. There is also grave doubt as to the immediate necessity for sending out equipment for repairs during the period from July 1 to September 15, 1922, and certain facts should be pointed out bearing on the wisdom of respondent's action in so doing. There was no greater demand for power during this period than during the early part of 1921, when certain of respondent's shops were closed for intervals of from one to three months. As a general policy respondent reduced its shop forces during periods of depression, resulting in a like reduction in the output of repairs. Past experience had demonstrated that the locomotives sent out would not be, and in fact were not, available for service for several months. Respondent's witness, however, gives as an additional reason for sending its equipment to outside shops that such action helped to settle the strike. Assum-

ing, however, that the resort to outside shops was necessary during this period, the great variation in the overhead charges in the contracts executed at about the same time indicates a disregard of efficiency and economy in management, and respondent has not justified the tremendous increase in costs nor the extraordinary allowances for overhead which to a great extent made up such excessive costs. The record compels us to regard these expenditures as improvident.

HALL, *Chairman*, dissenting:

For reasons sufficiently indicated in my expression appended to *Construction and Repair of Ry. Equipment: A. C. L. R. R. Co.*, 66 I. C. C. 727 at 731, I take no part in the conclusions here reached.

COMMISSIONER Cox dissents.

93 I. C. C.

No. 15408

MILNE LUMBER COMPANY v. CLEVELAND, CINCINNATI,
CHICAGO & ST. LOUIS RAILWAY COMPANY ET AL.

Submitted October 28, 1924. Decided December 11, 1924

Demurrage charges collected for detention of one car of yellow-pine lumber at Cleveland, Ohio, found illegal. Reparation awarded.

G. E. Russell for complainant.

L. P. Day, E. A. deFuniak, and B. F. Morris for defendants.

REPORT OF THE COMMISSION

DIVISION 4, COMMISSIONERS MEYER, EASTMAN, AND POTTER

BY DIVISION 4:

This case was presented under the shortened procedure. The Cleveland, Cincinnati, Chicago & St. Louis Railway Company, hereinafter called the defendant, filed exceptions to the report proposed by the examiner and orally argued the case.

Complainant, a corporation, is engaged in the wholesale lumber business with offices at St. Louis, Mo. By complaint filed November 17, 1923, it alleges that the demurrage charges collected for the detention of car L. & N. 101332, containing yellow-pine lumber, at Cleveland, Ohio, from July 1, 1922, to August 7, 1922, were illegal. Reparation is asked.

The car was shipped from River Falls, Ala., May 24, 1922, to complainant at Cincinnati, Ohio, and arrived June 7, 1922. On June 17, 1922, it was reconsigned to complainant at Cleveland, Ohio. It arrived at Cleveland over defendant's line July 1, 1922, and was released from demurrage August 7, 1922. Demurrage in the sum of \$133 was assessed and collected for the detention at Cleveland. The question presented is whether or not the detention at Cleveland was due to a demand by defendant's agent at that point for the payment of charges in excess of tariff authority for the detention at Cincinnati. Instructions for the reconsignment of the car at Cincinnati were mailed by complainant on June 17, 1922. However, the car was held under demurrage until June 19 and the amount of \$33, advance charges of the Louisville & Nashville, erroneously in-

cluded a charge of \$5 for the latter date. The charges for this detention were subsequently corrected to \$28, and refund of the overcharge was made to complainant on March 8, 1923.

Rule 8 of the applicable demurrage tariff provided as follows:

No demurrage charges shall be collected under these rules for detention of cars through causes named below. Demurrage charges assessed or collected under such conditions shall be promptly canceled or refunded by this railroad.

* * * * *

SECTION C. Demand of overcharge. When this railroad's agent demands the payment of transportation charges in excess of tariff authority.

Notice of arrival at Cleveland was sent to complainant at St. Louis on the day the car arrived. The agent at Cleveland wrote complainant on July 3, 1922, requesting that it furnish disposition of the car, and on July 7 received a letter from complainant, dated July 5, taking exception to the amount of the demurrage charges assessed for the detention at Cincinnati, and inquiring if Nickel Plate delivery would be protected. All of the details concerning the negotiations on the question of the overcharge are not disclosed by the record, but it appears that on July 13, the agent at Cleveland advised complainant that the matter had been taken up with the Louisville & Nashville, and that he further notified complainant by letter and telegram on the following day that the agent of the Louisville & Nashville at Cincinnati advised that the bill for demurrage at that point was correct. On July 19 he again requested complainant by letter and telegram to furnish disposition of the car, and made a similar request by telegram on July 26. It further appears that the agent at Cleveland suggested to complainant at some time during the period of detention that delivery be accepted and that claim be filed for any overcharges, and finally advised that, unless disposition of the car was furnished, the contents would be placed in storage. Complainant states that when it appeared that it would be unable to secure a correction of the charges in controversy, it decided to pay the charges and secure possession of the car. On August 8, 1922, the agent at Cleveland received a letter, dated August 4, from complainant's representative at that point, enclosing a check for \$365.30 for freight and demurrage charges and requesting that the car be switched to the Pennsylvania for delivery on the "John R. Edwards switch." The envelope in which these instructions were received was postmarked August 7, 2.30 p. m., and the car was released from demurrage at 6 p. m. on that date. Demurrage in an additional amount of \$10 was assessed for detention after these instructions were sent, which was subsequently paid by complainant.

The statements of the parties are not in harmony in some respects. Defendant contends that it "did not at any time demand payment of charges in excess of those named in lawfully published tariffs, but was striving during the entire period that the car was held on its rails to secure disposition from the complainant," that it did not demand the payment of a specific amount, but merely asked that complainant furnish disposition so that the car might be released and the track space it was occupying devoted to other purposes; and that it is customary and usual for the final consignee to make settlement for charges on cars of reconsigned lumber, as was done in this case, "so that it was not at all necessary for the complainant to concern itself with the amount of the outstanding charges." However, complainant owned the shipment while it was held at Cleveland and actually paid the charges thereon, including the demurrage charges in question.

Complainant, on the other hand, states that when the car arrived at Cleveland, defendant did not place it "for delivery on any of its team tracks or other places of delivery, but delivery was withheld until all charges had been paid. The agent made no tender of delivery nor did he offer to deliver the car on payment of the charges less the amount complainant claimed" as overcharges. It further contends that the agent at Cleveland was requested to correct the charges and advise, and payment would be made and the shipment immediately unloaded; and that "as the shipment was in defendant's possession, complainant was powerless to release the car until actual delivery was made." It appears, however, that as no definite place of delivery had been indicated by complainant, defendant could not make delivery of the car until instructions as to its disposition were received.

The record shows that the charges against the shipment on arrival at Cleveland actually included an overcharge of \$5, representing the erroneous assessment of excess demurrage for the detention at Cincinnati, and that complainant, upon being advised of the amount of the charges, called this fact to the attention of the agent at Cleveland, and requested correction to the proper basis. While defendant was not in possession of information as to what disposition to make of the car during the period of the detention, nevertheless the furnishing of such instructions by complainant would not have settled the dispute as to the correctness of the outstanding charges; and had such instructions been given and delivery made, complainant would thereupon have been liable for the charges assessed. The fact that complainant failed to give instructions for disposition of the car during the pendency of the controversy did not prevent the applica-

tion of the above-quoted demurrage rule. The computation and billing of charges against the shipment must be regarded as a demand for payment. There is nothing in the rule quoted which suggests that the agent must make a demand in addition to the usual bill or form of advice as to the amount claimed to be due.

The applicable demurrage tariff provided that demurrage would not be assessed for detention of cars where the carrier's agent demanded payment of transportation charges in excess of tariff authority. The charges billed against the car at Cleveland admittedly included an overcharge of \$5, which must be regarded as a demand for charges in excess of tariff authority, and these charges were promptly questioned by complainant. Upon the facts it must be held that demurrage was not assessable against the car during the time of its detention at Cleveland. See *Birmingham Commission Co. v. Director General*, 74 I. C. C. 693, and *Conf. Ruling 32*.

We find that the demurrage charges in controversy were assessed contrary to the provisions of the applicable demurrage tariff and were illegal; and that complainant paid and bore such charges, and is entitled to reparation, with interest. Complainant should comply with Rule V of the Rules of Practice.

93 I. C. C.

No. 15510

FORRESTER-NACE BOX COMPANY v. DIRECTOR GENERAL, AS AGENT, AND ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY

Submitted October 20, 1924. Decided December 11, 1924

Rate on empty wooden boxes from Kansas City, Mo., to Carl Junction, Mo., during Federal control, found not unreasonable; and no damage shown to have resulted from the alleged departure from the long-and-short-haul provision of section 4 of the interstate commerce act. Complaint dismissed.

I. W. Prectorius and H. G. Zimmerman for complainant.

John F. Finerty and E. C. Blanchard for Director General of Railroads, as agent.

REPORT OF THE COMMISSION

DIVISION 4, COMMISSIONERS MEYER, EASTMAN, AND POTTER

BY DIVISION 4:

This case was presented under the shortened procedure. No exceptions were filed to the report proposed by the examiner.

Complainant corporation alleges that the interstate rate charged for the transportation of empty wooden boxes, in carloads, during the period between February, 1919, and February, 1920, from Kansas City, Mo., to Carl Junction, Mo., was unreasonable and violative of the long-and-short-haul provision of section 4 of the interstate commerce act, in that it exceeded the rate from Kansas City to Carthage, Mo., to which Carl Junction is intermediate. Reparation only is sought.

Informal complaint was filed by the Forrester-Nace Box Company. The formal complaint, filed by the same company, is signed by the attorney for complainant and by the general traffic manager of the General Box Company, which bought the entire stock of complainant. The director general contends that no formal complaint has been filed by the Forrester-Nace Box Company and that the complaint is barred because filed by the General Box Company. While the complaint carries the signature of the general traffic manager of the General Box Company without showing agency, the complaint is also signed by complainant's attorney. The com-

plaint of the Forrester-Nace Box Company is properly signed and is not barred.

The rate to Carl Junction was 19 cents per 100 pounds and to Carthage 18 cents. The distances over the route of movement to these two points are 154 and 168.9 miles, respectively.

Complainant takes the position that because the rate to the intermediate point is higher than to the more distant point, the higher rate is therefore unreasonable under section 1 of the interstate commerce act. This does not follow. Except for this, complainant submitted no evidence bearing upon the unreasonableness of the rate assailed.

Defendants show that the rate under attack compares favorably with the rates on wooden boxes, egg-case fillers, and empty barrels and kegs for similar hauls from Kansas City.

Complainant also relies upon the reference in the tariff to rule 77 of Tariff Circular 18-A. However, the rate charged and the rate sought were published as point-to-point rates and were not made subject to that rule.

The record contains no proof of damage growing out of the alleged departure from the fourth section.

We find that the rate assailed was not unreasonable and that no damage is shown to have resulted from the alleged departure from section 4. The complaint will be dismissed.

93 I. C. C.

No. 15533

PARKERSBURG RIG & REEL COMPANY v. MISSOURI
PACIFIC RAILROAD COMPANY ET AL.

Submitted September 22, 1924. Decided December 11, 1924

Rates on fabricated steel tank material, in carloads from Haynesville, La., to El Dorado and Smackover, Ark., and from Couchwood, La., to Smackover, found unreasonable. Reparation awarded.

V. E. Milsark for complainant.

A. L. Burford, Wallace T. Hughes, A. B. Kiskaddon, and H. H. Larimore for defendants.

REPORT OF THE COMMISSION

DIVISION 4, COMMISSIONERS MEYER, EASTMAN, AND POTTER

BY DIVISION 4:

This case was presented under the shortened procedure. Exceptions were filed by complainant to the report proposed by the examiner.

Complainant, a corporation manufacturing oil-well equipment at Parkersburg, W. Va., alleges by complaint filed January 7, 1924, that the rates charged on six carloads of fabricated steel tank material shipped during the period from May 3 to December 4, 1922, four from Haynesville, La., to Smackover, Ark., one from Haynesville to El Dorado, Ark., and one from Couchwood, La., to Smackover were unreasonable. The prayer is for reparation. Rates will be stated in cents per 100 pounds.

Haynesville is a local station on the Louisiana & North West between Gibsland, La., and McNeil, Ark., and Couchwood, a local station on the Louisiana & Arkansas south of Stamps, Ark. Smackover and El Dorado are served by the Missouri Pacific and Chicago, Rock Island & Pacific, respectively.

The shipments consisted of fabricated steel-tank material ¹ knocked down. Two of the shipments from Haynesville to Smackover apparently were unrouted. One of these moved over the Louisiana & North West to McNeil, Ark., St. Louis Southwestern to Camden,

¹ Angles, bars, beams, bolts, castings, nuts, and plates or sheets, 16 gauge and heavier.
93 I. C. C.

Ark., and Missouri Pacific beyond, 77.6 miles. The record is not clear as to the actual route of movement of the second shipment. Apparently it also moved over the route last described. The other shipments moved as routed, that from Couchwood over the Louisiana & Arkansas to Stamps, the St. Louis Southwestern to Camden, and the Missouri Pacific beyond, 109 miles; that from Haynesville to El Dorado, over the Louisiana & North West to Gibsland, the Vicksburg, Shreveport & Pacific to Ruston, La., and the Chicago, Rock Island & Pacific beyond, 111.3 miles; and those from Haynesville to Smackover, one by way of the Louisiana & North West to McNeil, St. Louis Southwestern to Camden, and the Missouri Pacific beyond, 77.6 miles, and the other over the Louisiana & North West to Gibsland, the Vicksburg, Shreveport & Pacific to Monroe, La., and the Missouri Pacific beyond, 180.4 miles. With the exception of the last mentioned and that from Haynesville to El Dorado the routes of movement are shown to be the short-line routes from and to the above points. The short-line route from Haynesville to Smackover, as indicated, is 77.6 miles, or 102.8 miles shorter than the route of movement of one of the shipments from and to these points; and from Haynesville to El Dorado, 92.5 miles over the Louisiana & North West to McNeil, Ark., St. Louis Southwestern to Camden, and the Missouri Pacific beyond. Charges were collected at the applicable fifth-class rates of 39.5 cents from Haynesville to Smackover, 45.5 cents from Couchwood to Smackover, and 50 cents from Haynesville to El Dorado. The rates of 39.5 and 45.5 cents were the joint fifth-class rates for the short-line distances between the points involved. The rate of 50 cents was the joint fifth-class distance rate for the distance traversed by the shipment from Haynesville to El Dorado, plus a differential of 15 per cent of the straight mileage prorate of the Louisiana & North West. The latter was one of the financially weak roads from and to points on which rates constructed on this basis were authorized in *Natchez Chamber of Commerce v. L. & A. Ry. Co.*, 52 I. C. C. 105, 129, and 58 I. C. C. 610, 645. This defendant's differential was canceled effective September 9, 1922, and, therefore, is not reflected in the rates on the other shipments from Haynesville which moved subsequent to that date.

As evidence of the unreasonableness of the rates, complainant refers, among others, to distance commodity rates for corresponding distances, in effect generally on and after July 1, 1922, under scales on iron and steel articles, including the articles comprising these shipments, applicable intrastate in Arkansas and interstate in Texas, and to specific commodity rates on iron and steel articles from Monroe, Shreveport, New Orleans, La., Memphis, Tenn., and St.

Louis, Mo., to a number of destinations in this territory, including Smackover and El Dorado.

In *Memphis Southwestern Investigation*, 77 I. C. C. 473, we prescribed for application between points in Louisiana and points in Arkansas, among others, a maximum distance scale of commodity rates on merchant iron and steel, including tank material, knocked down, in which the joint-line rates for the short-line distances between Haynesville and Smackover and Couchwood and Smackover are 19.5 and 23 cents, respectively, and for the distance over route of movement of the shipment from Haynesville to El Dorado, 23.5 cents. Rates on this basis, to which reparation is sought, were established from and to these points effective June 30, 1923.

The movement of these shipments was not preceded and, so far as this record shows, has not been followed by other movements of fabricated steel tank material from and to these points. Defendants urge that class rates are properly applicable on isolated shipments such as these; and that the class rates charged on these shipments were reasonable, being based upon rates fixed by us. Commodity rates, they contend, are established to take care of sustained movements. Fabricated steel tank material apparently is not produced at any of the points from and to which complainant's shipments moved, but complainant maintains warehouses at three of these points, namely, Haynesville, El Dorado, and Smackover, from which it distributes its products. Although these are the only shipments shown to have been made by it from and to these points, complainant asserts that materials, such as those here considered, are frequently shipped from one warehouse to another in order to replenish the stock at a particular warehouse. As indicating the regularity of these movements complainant states that it shipped approximately 400 cars of oil-well equipment between its warehouses in the southwestern oil fields during 1922, and 200 cars during 1923. Complainant is entitled to a reasonable rate, and the fact that there have thus far been relatively few shipments of the commodities in question from and to these points is not the sole determinative factor.

The commodity rates prescribed in *Memphis Southwestern Investigation*, *supra*, however, may not fairly be used as the measure of reasonable rates on these shipments. In that case we required a general readjustment of commodity rates in certain portions of the Southwest involving both increases and reductions. We have repeatedly said that in such cases substantial justice would not be advanced by awarding reparation to those making such demands, and have denied reparation. Furthermore, rates based upon those fixed in that case are about 50 per cent of the fifth-class rates charged.

The specific commodity rates instanced by complainant for comparative purposes, and on which defendants indicate there was and is a regular movement, range up to 63 per cent of the corresponding fifth-class rates. In this connection complainant is mistaken in its view that reparation to the basis of rates on iron pipe prescribed in the above case was awarded on shipments of that commodity from points in Kansas to destinations in Oklahoma, in *Prairie Pipe Line Co. v. Director General*, 88 I. C. C. 167.

In *Railroad Commission of Louisiana v. A. H. T. Ry. Co.*, 48 I. C. C. 312, 354, we prescribed single-line rates on iron and steel articles, minimum 30,000 pounds, between Shreveport, La., and points in Texas common-point territory equal to 60 per cent of the single-line fifth-class rates prescribed for similar territorial application in the same proceeding, subject to a maximum of 32 cents. Rates 2 cents higher were authorized for joint-line application, subject to the same maximum. In *Galveston Commercial Asso. v. Director General*, 57 I. C. C. 390, we found that iron and steel articles, merchant and structural, from Galveston and Houston, Tex., to Louisiana points west of the Mississippi River should be given the basis prescribed in the *Shreveport case*, namely, 60 per cent of the Shreveport-Texas fifth-class scale. The basis prescribed in those cases if applied to the distances over the routes of movement of these shipments would result in rates of 23 and 35 cents from Haynesville to Smackover, 26.5 cents from Couchwood to Smackover, and, including the Louisiana & North West differential, 32 cents from Haynesville to El Dorado.

The earnings yielded by the applicable rates and by rates based upon the Shreveport-Texas scale are set forth below:

From—	To—	Distance	Weight	Applicable		Shreveport-Texas scale	
				Rate	Per car-mile	Rate	Per car-mile
		Miles	Pounds	Cents	Cents	Cents	Cents
Haynesville.....	Smackover.....	77.6	¹ 53,985	39.5	274.7	23	160
Couchwood.....	do.....	109	36,000	45.5	150.2	26.5	87.5
Haynesville.....	El Dorado.....	111.3	52,200	² 50	234.5	² 32	150
Do.....	Smackover.....	180.4	47,800	39.5	104.6	35	92.7

¹ Average weight of three shipments.

² Includes Louisiana & North West differential.

We find that the rates assailed were unreasonable to the extent that they exceeded 23 cents on the three shipments that moved over the short-line route, above indicated, from Haynesville to Smackover, 26.5 cents from Couchwood to Smackover, 35.5 cents prior to July 1, 1922, and 32 cents thereafter from Haynesville to El Dorado,

and 35 cents on the one shipment that moved 180.4 miles from Haynesville to Smackover; that complainant made the shipments as described and paid and bore the charges thereon; that it was damaged thereby in the amount of the difference between the charges paid and those which would have accrued at the rates herein found reasonable; and that it is entitled to reparation, with interest. Complainant should comply with Rule V of the Rules of Practice.

93 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 2230
CARBOYS, RETURNED EMPTY, IN WESTERN CLASSIFI-
CATION TERRITORY

Submitted September 25, 1924. Decided December 17, 1924

Proposed increased rating on acid carboys, returned empty, from and to points in western trunk-line territory found justified. Order of suspension vacated and proceeding discontinued.

D. E. McKee for respondents.

H. D. Bergen and *H. C. Wilson* for protestants.

REPORT OF THE COMMISSION

DIVISION 3, COMMISSIONERS HALL, CAMPBELL, AND COX

BY DIVISION 3:

By schedules filed to become effective September 10, 1924, respondents proposed by restricting the application of exceptions to the western classification to increase the rating on acid carboys, returned empty, from points in western trunk-line territory west of the Missouri River to points in this territory east thereof. Upon protest of the chambers of commerce of Kansas City, Mo., Omaha, Nebr., and Sioux City, Iowa, operation of the schedules was suspended until January 8, 1925.

Acid carboys, returned empty, between points in western trunk-line territory on and west of the Missouri River and from points west of that river to points east thereof in said territory, are rated one-half fourth class, any quantity, under exceptions to the western classification. The proposed schedules would increase the rating from points west of the Missouri River to points east thereof to fourth class, which is the rating applicable from points on the Missouri River to Chicago, Ill., and other points east of the Mississippi River; between points east of the Mississippi River; and from points in that territory to points west of the Missouri River.

Respondents state that when establishing the one-half of fourth-class rating they intended to apply it only between points in western trunk-line territory west of the Missouri River and that they did not discover until recently that to points east of the river a lower rating was applicable from points immediately west of the river than from points on the river; that the establishment of one-half fourth class throughout all of western trunk-line territory was then considered;

and that after investigation the conclusion was reached that the approval thereof would conflict with the policy of western lines and would yield revenue less than the cost of transportation.

They state further that the proposed schedules were filed for the purpose of carrying out their original view as to the territory in which the fourth-class rating should apply, and also to remove fourth-section departures resulting from the fact that the class rates from points immediately west of the Missouri River to Chicago and other points east of the Mississippi River are the same as those from Kansas City, Omaha, and other Missouri River points. From these latter points, as above stated, the full fourth-class rating is applicable.

In opposing the proposed rating protestants point out that one-half of fourth class is also the present rating applicable on returned empty mineral-water containers and that this rating has been in effect on both the acid containers and mineral-water containers for a number of years. Protestants receive their supplies of acid at Kansas City, Omaha, and Sioux City from Chicago and Chicago rate points and distribute it in territory west of the Missouri River. The empty carboys are returned to them at the above-named points for reforwarding to the dealers or manufacturers from which the acid was originally purchased. Protestants are interested principally in the rates from Omaha, Kansas City, and Sioux City, and their protests were filed on the theory that the rating from these points would be increased under the proposed schedules. As heretofore stated, the full fourth-class rating is now applicable from Omaha, Kansas City, and Sioux City, and the schedules under suspension do not propose to increase this rating.

Respondents urge that acid carboys are not desirable freight and that they can not be handled as expeditiously or cheaply as other empty returned containers which can be tiered. They also urge that, although empty acid carboys may not be received for transportation unless thoroughly drained, there is still considerable danger involved in their handling, and that respondents' rules carry a recommendation that whenever practicable they should not be loaded in cars containing valuable or perishable freight. It was also testified that many other restrictions increase the transportation costs of acid carboys which are not operative with respect to other empty returned containers, such as mineral-water containers.

As above stated, the proposed rating is the same as that now applicable from intermediate points and would have the effect of removing fourth-section departures. Although the rate on returned shipments of acid carboys is published as an any-quantity rating, the record indicates that these carboys generally move in less-than-

carload quantities. The proposed rating, which is the same as that generally applicable in western trunk-line territory east of the Missouri River, does not appear to be unreasonable and it is not shown that it would result in any undue prejudice or preference.

We find that the proposed schedules have been justified. An order will be entered vacating our order of suspension and discontinuing this proceeding.

93 I. C. C.

No. 13987

CHRISTIE & EASTERN RAILWAY COMPANY v. KANSAS
CITY SOUTHERN RAILWAY COMPANY ET AL.

Submitted April 13, 1923. Decided December 8, 1924

Divisions and allowances accorded the Christie & Eastern Railway Company by its trunk-line connections out of the joint interstate rates on lumber and forest products not shown to have been or to be unjust, unreasonable, inequitable, or otherwise unlawful. Complaint dismissed.

D. J. Fitzgerald, Frank Andrews, and C. C. Carey for complainant.
E. H. Moore and G. H. Muckley for Kansas City Southern Railway Company and Texarkana & Fort Smith Railway Company; *James M. Chaney and C. C. P. Rausch* for Missouri Pacific Railroad Company; *J. A. Lundmark* for Chicago, Rock Island & Pacific Railway Company; *J. A. Lynch and Robert Thompson* for Texas & Pacific Railway Company and its receivers; *H. A. White and N. S. Scott* for Red River & Gulf Railroad; and *Joseph Lallande* for Morgan's Louisiana & Texas Railroad & Steamship Company and Southern Pacific Company.

REPORT OF THE COMMISSION

LEWIS, *Commissioner*:

Exceptions were filed by complainant to the report proposed by the examiner.

The Christie & Eastern Railway is a common carrier, engaged in interstate commerce and subject to the interstate commerce act. It alleges that the divisions accorded it by defendants out of the joint interstate rates on lumber and forest products in which it participates are inadequate, unjust, and inequitable. We are asked to prescribe for the future adequate, reasonable, and equitable divisions as between complainant and defendants. Divisions herein are stated in cents per 100 pounds, except where charges per car are named.

The Christie & Eastern is controlled by the stockholders of the Peavy-Wilson Lumber Company, hereinafter called the lumber company, through ownership of approximately 98 per cent of the capital stock. It operates over a total of 78.82 miles of main line, and has 2 miles of yard tracks and sidings. Its equipment consists of two

98 I. C. C.

locomotives, two freight cars, one caboose car, and two gasoline-motor cars.

Of the main-line trackage, 10.17 miles, extending from Sandel to Peason, La., is owned; 5 miles, from Peason to Red River Junction, La., is leased from the lumber company; and 63.65 miles, from Red River Junction to Lecompte, La., is operated under trackage rights over the rails of the Red River & Gulf Railroad. The leased tracks and 4.98 miles of the tracks operated under trackage rights are maintained by the Christie & Eastern. The trunk-line connections are with the Kansas City Southern at Sandel, La., the Missouri Pacific at Long Leaf, La., and the Chicago, Rock Island & Pacific, Texas & Pacific, and Morgan's Louisiana & Texas Railroad & Steamship Company (Southern Pacific system) at Lecompte, La.

The principal industries served by the Christie & Eastern are the sawmill and commissary stores of the lumber company and three turpentine plants at Peason. It also serves a rock-crushing plant of the Rock Products Company, about 4 miles west of Peason, which is reached by a spur track. Neither the lumber company nor its stockholders have any financial interest in the turpentine plants or in the Rock Products Company. The lumber company owns approximately 42,000 acres of standing timber tributary to the Christie & Eastern, which it is estimated will produce from 500,000,000 to 800,000,000 feet of lumber. The greater part of the raw material for the turpentine plants is obtained from the forest of the lumber company.

The Christie & Eastern was not a party to *The Tap Line Case*, 23 I. C. C. 277, 549, but in August, 1917, was informally found by us to be a common carrier of the tap-line class, controlled by the principles announced in our second supplemental report in that proceeding, 31 I. C. C. 490, in which we fixed the maximum allowances and divisions out of the rates on interstate shipments of lumber and forest products that might be paid by trunk lines to the tap lines with which they respectively connected. These allowances and divisions were increased by the fifth and sixth supplemental orders, and later reduced by the seventh supplemental order, to the following figures, which are still in effect: For switching 1 mile or less from the junction, \$3 per car; over 1 mile and up to 3 miles, \$4.05 per car; over 3 miles and not more than 10 miles, 2.5 cents; over 10 miles and not more than 20 miles, 3.5 cents; over 20 miles and not more than 40 miles, 4.5 cents; and over 40 miles, 5.5 cents.

Complainant does not attack the divisions for distances up to 40 miles, but because of the extension of its line to trunk-line connections more distant from the mill, contends that it should receive

divisions for distances in excess of 40 miles upon the basis of a logical extension of the scale prescribed for distances ranging from 4 miles to 40 miles and over. We are asked to extend the tap-line scale so that the Christie & Eastern will receive 5.5 cents for hauls over 40 miles and not more than 50 miles; 6.5 cents for hauls over 50 miles and not more than 60 miles; 7 cents for hauls over 60 miles and not more than 70 miles; and 8 cents for hauls over 70 miles. It is further contended that in the alternative the Christie & Eastern should be eliminated from the tap-line class, and held to be, and treated as a trunk-line carrier, with respect to its divisions. The record fails to show, however, that its corporate and operating conditions differ in any important particular from those of other tap lines to which the principles announced in *The Tap Line Case* are applied.

Since the original and supplemental reports in that proceeding were issued several roads parties thereto have been relieved by further order from the force and effect of the orders therein, but such action was taken upon a showing that there had been a complete and bona fide separation of the interests that controlled the railroad from those that controlled the lumber company, and inasmuch as there no longer existed any community of interest, direct or indirect, between the railroad and the lumber company, the principles announced in *The Tap Line Case* had no further application. In the instant case no such condition is shown.

Complainant attempts to show, by a comparison with the divisions on lumber in effect between the trunk lines themselves, for substantially similar service, that the present tap-line divisions are less than reasonable. Under the principles announced by us in *The Tap Line Case*, *supra*, and which were affirmed by the Supreme Court, the divisions between carriers not operated under similar circumstances and conditions are not a proper measure of divisions to tap lines. Concerning divisions to tap lines we said in *Wasteful Service by Tap Lines*, 53 I. C. C. 656:

A tap line is entitled only to just compensation for the actual and reasonably necessary services performed by it as a part of the transportation of the traffic from point of origin to destination, and our orders relative to divisions out of the through rates were framed upon this principle.

During the year 1921 the total outbound lumber handled by the Christie & Eastern amounted to 2,068 carloads, having an aggregate weight of 62,062 tons, or approximately 30 tons per car. This tonnage was shipped by the lumber company from its mill at Peason to various destinations, via Sandel and the Kansas City Southern, its only trunk-line connection prior to June 20, 1922. On the basis

of that tonnage and 60,000 pounds per car the Christie & Eastern would receive under present divisions 3.5 cents for its haul to Sandel, 10.17 miles, which would yield \$21 per car, \$2.10 per car-mile, and 7 cents per ton-mile. For its haul to connections at Long Leaf and Lecompte, an average of 64 miles, it would receive on lumber, for all destinations except New Orleans and intermediate points, 5.5 cents, yielding \$33 per car, 56 cents per car-mile, and 18.6 mills per ton-mile. On New Orleans traffic the division is 3.5 cents and the yield \$21 per car, 31 cents per car-mile, and 10.2 mills per ton-mile.

The following table shows the proportions of distance, rates, and revenue which would accrue to the Christie & Eastern and its trunk-line connections under the present divisions on lumber delivered at the various junctions for transportation to the principal markets:

	Route	Distance	Rate proportion	Revenue per car	Car-mile revenue	Ton-mile revenue
		<i>Miles</i>	<i>Cents</i>		<i>Cents</i>	<i>Mills</i>
Peason to Kansas City:						
Christie & Eastern.....	Sandel, K. C. S.....	10	3.5	\$21	210	70
Trunk line.....	do.....	647	31.5	189	29.7	9.9
Through route.....	do.....	657	35			
Peason to St. Louis:						
Christie & Eastern.....	Long Leaf, Mo. Pac.....	59	5.5	33	56	18.6
Trunk line.....	do.....	649	24	144	21.8	7.2
Through route.....	do.....	703	29.5			
Peason to Chicago:						
Christie & Eastern.....	do.....	59	5.5	33	56	18.6
Trunk line.....	do.....	933	34	204	21.6	7.2
Through route.....	do.....	992	39.5			
Peason to New Orleans (export):						
Christie & Eastern.....	Lecompte, T. & P.....	69	3.5	21	31	10.2
Trunk line.....	do.....	178	8.5	51	28.7	9.5
Through route.....	do.....	247	12			

The lumber rates from Peason to all points except New Orleans and points intermediate thereto are the same via all junctions. In view of the lower rate to New Orleans for export the Christie & Eastern accepts a division of 3.5 cents on lumber hauled to Lecompte, a distance of 69 miles, the same as it would receive if hauled to Sandel, a distance of 10.17 miles, and no change is sought in this division.

The record shows that the 10.17 miles of the Christie & Eastern from Peason, the location of the lumber mill, to Sandel, the connection with the Kansas City Southern, was built in 1917. This construction afforded the proprietary company an outlet for its lumber products to all the more important consuming territories. No other outlet was sought until 1921. Late in that year the lumber company constructed a line from Peason to a connection with the Red River & Gulf at Red River Junction, a distance of about 5 miles, which it turned over to the use of its subsidiary at a monthly rental of \$500. Prior to that time, in July, 1921, the Christie & East-

ern and Red River & Gulf had entered into an agreement by which the former acquired trackage rights over the latter from Red River Junction to Long Leaf and Lecompte at a monthly rental of \$2,000. The result of these agreements was an aggregate increase of \$2,500 per month in fixed charges and, in addition, increased cost for train operation, hire of equipment, and track maintenance. This extended service was inaugurated June 20, 1922. Exhibits of record show that for the months of January to June, 1922, inclusive, operations were conducted at profits aggregating \$24,200.19, whereas for the first three months following the extension of the service the total expenses exceeded the gross earnings by \$7,254.64, an average of \$2,418.21 per month.

The only advantages to the Christie & Eastern of its extended operations under trackage rights over the Red River & Gulf, as they appear on this record, are lower rates on lumber from the proprietary mill to certain destinations in southern Louisiana, together with a better car supply. These advantages, however, inure to the benefit of the lumber company and not to the Christie & Eastern.

This carrier is before us seeking increased divisions with its trunk-line connections at Long Leaf and Lecompte to compensate it for the additional costs which it has incurred in moving its traffic to those points instead of to Sandel. In determining and prescribing divisions we are enjoined to give due consideration, among other matters, to the efficiency with which the carriers concerned are operated and the importance to the public of the transportation services of such carriers. The element of public interest must therefore be considered. The record does not establish any benefit to the public from the extension of the service though it does show that this extension will be of benefit to the proprietary lumber company both in affording connection with other carriers and in better car supply. It is clearly established that the hauling of the traffic to Long Leaf or Lecompte, instead of to the less distant connection at Sandel, is an unnecessary and uneconomic service and not in the public interest. The traffic may now move from Peason to all important consuming points, with few exceptions, via Sandel at rates as low as and over distances as short as by way of the routes through Long Leaf and Lecompte.

The Christie & Eastern has voluntarily assumed a burden of expense which apparently can not be overcome by an increase in the amount of its traffic. The service therefore falls under the ban of inefficiency. No sound reason appears why the revenues of the trunk lines should be depleted to offset this added and unnecessary expense.

We find that the divisions out of the interstate rates on lumber and forest products now accorded the Christie & Eastern Railway Company by its trunk-line connections have not been shown to have been or to be unjust, unreasonable, inequitable, or otherwise unlawful. The complaint will be dismissed.

COMMISSIONERS AITCHISON and CAMPBELL dissent.

93 I. C. C.

No. 14976

EDGAR L. PEARSON & COMPANY v. ST. LOUIS, BROWNSVILLE & MEXICO RAILWAY COMPANY ET AL.

Submitted October 27, 1924. Decided December 11, 1924

Rates on munition lint, in carloads, from Brownsville, Bellville, and La Grange, Tex., to Des Moines and Dubuque, Iowa, found unreasonable. Reparation awarded.

F. R. Dalzell, Paul Voigt, and R. C. Fulbright for complainants.
W. A. Brown and H. E. Everheart for defendants.

REPORT OF THE COMMISSION

DIVISION 4, COMMISSIONERS MEYER, EASTMAN, AND POTTER

BY DIVISION 4:

No exceptions were filed to the report proposed by the examiner.

Complainants are Edgar L. Pearson and Elbert D. Pearson, dealers in cotton and allied products under the firm name of Edgar L. Pearson & Company. By complaint filed June 8, 1923, they allege that the rates charged on five carloads of munition lint shipped from Brownsville, Bellville, and La Grange, Tex., to Des Moines and Dubuque, Iowa, between October 14, 1921, and January 4, 1922, inclusive, were unreasonable to the extent that they exceeded, by more than 9 and 8 cents, respectively, prior and subsequent to January 1, 1922, rates contemporaneously in effect from and to said points on cottonseed hulls. We are asked to award reparation. Rates are stated in cents per 100 pounds.

Details of the shipments are shown in the following table:

From—	To—	Date shipped	Route	Cars	Rate charged	Rate sought
Brownsville.....	Des Moines.....	Oct. 14, 15, 17, 1921	{ St. L., B. & M. M., K. & T. of T. M., K. & T. C., R. I. & P. G., C. & S. F. A., T. & S. F. C., B. & Q. M., K. & T. of T. M., K. & T. C., M. & St. P. }	3	¹ 114	² 76.5
Bellville.....	do.....	Nov. 29, 1921	{ A., T. & S. F. C., B. & Q. M., K. & T. of T. M., K. & T. C., M. & St. P. }	1	¹ 106	² 66.5
La Grange.....	Dubuque.....	Jan. 4, 1922	{ M., K. & T. of T. M., K. & T. C., M. & St. P. }	1	³ 125.5	³ 63

¹ Rates on cotton linters, minimum 20,000 pounds.

² Rate on cottonseed hulls, minimum 30,000 pounds, plus 9 cents prior to Jan. 1, 1922, and 8 cents thereafter.

³ Rates on cotton linters, minimum 20,000 pounds. The applicable rate from La Grange to Dubuque was 106 cents. This shipment was overcharged.

Munition lint was manufactured during the war period only. In order to secure a maximum output of lint for the manufacture of high explosives, the War Industries Board prohibited more than one ginning of the cotton seed after removing the cotton, and required the mills to obtain 145 pounds or more of lint per ton of cotton seed by one operation. The separate cutting of cotton linters and cottonseed-hull shavings was therefore discontinued, and instead there was produced the commodity known as munition lint. It contained some long fiber, which formerly had been, and is now, removed by a first cut and shipped as cotton linters, and a much greater quantity of very short fiber, which formerly had been, and is now, removed by a second or third cut and shipped as cottonseed-hull shavings.

Following the war and during the spring of 1921 there was in Texas a large accumulation of low-grade linters, such as those contained in complainants' shipments, which it was impossible to move at the prevailing rates on cotton linters. Accordingly, upon representation of shippers, defendants, among other southwestern lines, agreed to publish emergency rates from Texas to interstate destinations on munition lint, minimum 30,000 pounds, on basis of 125 per cent of the contemporaneous rates on cottonseed hulls, with a maximum of 9 cents per 100 pounds. These rates became effective on September 29, 1921, limited to expire March 31, 1922, and were published to apply from Texas common points to such destinations as Sioux City and Council Bluffs, Iowa, Omaha and Nebraska City, Nebr., East Hannibal, Quincy, Rock Island, East Dubuque, and Chicago, Ill. For reasons not explained, Des Moines and Dubuque as destination points, and several of defendants as participating carriers, were omitted. On December 6, 1921, all of defendants were named as parties to the emergency rates, and at the same time defendants established from and to the same points rates, not limited by expiration date, on cottonseed-hull fiber shavings, other than bleached or dyed, the same as on munition lint. On October 1, 1922, the basis for these rates on shavings was changed from 9 to 8 cents over the rates on hulls. Effective November 1, and December 1, 1922, respectively, Des Moines and Dubuque, among other points, were added as destination points to which these rates applied.

A comparison of the rates assailed and those contemporaneously in effect on shavings and hulls, together with the earnings thereunder, appears in the following table:

	Distance	Rate	Ton-mile earnings	Car-mile earnings ¹
	<i>Miles</i>	<i>Cents</i>	<i>Mills</i>	<i>Cents</i>
Brownsville to Des Moines:				
Cotton linters.....	1,649	114	13.83	16.65
Shavings.....	1,649	76.5	8.67	13.00
Hulls.....	1,649	67.5	8.19	12.28
La Grange to Dubuque:				
Cotton linters.....	1,150	106	18.43	27.79
Shavings.....	1,150	70	12.17	18.25
Hull.....	1,150	61	10.60	15.90
Bellville to Des Moines:				
Cotton linters.....	1,048	106	20.23	41.03
Shavings.....	1,048	66.5	12.69	19.03
Hulls.....	1,048	57.5	10.97	16.45

¹ Based on minimum of 30,000 pounds on shavings and hulls. Average weight of the shipments involved 28,601 pounds.

² Rates on shavings and hulls reduced 6 cents on January 1, 1922, but old rate used for comparative purposes.

La Grange and Bellville are in the southern portion of Texas common-point territory, the former on the Missouri-Kansas-Texas of Texas and the latter on the Gulf, Colorado & Santa Fe. Brownsville is at the southern end of Texas differential territory on the St. Louis, Brownsville & Mexico. The assailed rate from the latter point was constructed by adding a differential of 8 cents to the rate from Texas common points. On shavings and hulls the differentials were 37 and 10 cents, respectively. The rates on shavings to basis of which reparation is sought applied to all points in Omaha-Davenport territory, in which Des Moines is located, as well as to all points in Chicago territory, in which Dubuque is located. The short-line distances to many points in these territories to which the rates on shavings applied are greater than those for which complainants' shipments moved.

The transportation characteristics of munition lint and of cottonseed-hull shavings are practically identical. Aside from the manufacture of munitions the two commodities were used for substantially similar purposes. As previously stated, munition lint as such was a war product only, and complainants do not desire rates for the future.

Defendants offered no evidence and expressed willingness to pay the reparation sought.

We find that the rates assailed were unreasonable to the extent that they exceeded 76.5 cents from Brownsville to Des Moines, 66.5 cents from Bellville to Des Moines, and 64 cents from La Grange to Dubuque, all subject to a minimum of 30,000 pounds; that complainants made the shipments as described and paid and bore the charges thereon; that they were damaged thereby in the amount of the difference between the charges paid and those which would have accrued at the rates and minimum herein found reasonable; and that they are entitled to reparation, with interest. Complainants should comply with Rule V of the Rules of Practice.

No. 15170

FAIRMONT CREAMERY COMPANY *v.* AMERICAN RAIL-
WAY EXPRESS COMPANY

Submitted September 30, 1924. Decided December 11, 1924

Rates on cream, in 10-gallon cans, shipped by express from Albion and Dallas Center, Iowa, to Omaha, Nebr., found unreasonable. Reparation awarded.

M. S. Hartman for complainant.

A. M. Hartung for defendant.

REPORT OF THE COMMISSION

DIVISION 4, COMMISSIONERS MEYER, EASTMAN, AND POTTER
BY DIVISION 4:

This case was presented under the shortened procedure. No exceptions were filed to the report proposed by the examiner.

Complainant, a corporation engaged in the manufacture of butter at Omaha, Nebr., by complaint filed August 13, 1923, alleges that the second-class express rates charged by defendant on cream, in 10-gallon cans, shipped during August and September, 1921, from Albion and Dallas Center, Iowa, to Omaha were unreasonable. The prayer is for reparation. Rates will be stated in amounts per 10-gallon can.

Dallas Center is on the Minneapolis & St. Louis between Grand Junction and Des Moines, Iowa, and Albion on the line of that carrier north of Marshalltown, Iowa. The shipments were delivered to defendant unrouted. They moved by express over the Minneapolis & St. Louis to Grand Junction and Marshalltown and thence to destination over the Chicago & North Western, 157 and 204 miles, respectively. Charges were collected on the basis of the second-class express rates of \$1.30 from Dallas Center and \$1.77 from Albion. Effective January 1, 1922, defendant established commodity distance rates plus a transfer charge of 6 cents on cream to Omaha of 59 cents from Dallas Center and 65 cents from Albion. Reparation is sought to the basis of these rates.

Prior to July 1, 1918, the express service over the Minneapolis & St. Louis and the Chicago & North Western was performed by the Adams Express Company and the American Express Company, respectively. At that time these companies maintained distance com-

modity rates on cream between points in the territory here considered for single express company service over one or more lines of railroad, a transfer charge in addition to the rates being assessed for movements over more than one railroad. Where the movement was from a railroad point served by one of these companies to a railroad point served by another the second-class rates were generally applicable. When defendant began operation on July 1, 1918, it adopted the tariffs of these and other express companies which it succeeded and continued the rates on the old basis, subject to the general increases, until January 1, 1922. In response to requests from many shippers, to eliminate the numerous separate tariffs, and to bring about uniformity of rates, defendant issued a consolidated tariff effective January 1, 1922, in which the application of the distance commodity rates was extended to interline express service over all railroads on which it operates in this general territory. By schedules filed to become effective December 24, 1923, defendant proposed to cancel the application of these rates for interline movements over the Chicago & North Western, leaving in effect the second-class rates. Upon protests filed by butter manufacturers and others these schedules were suspended and found not justified in *Express Rates on Milk and Cream via C. & N. W.*, 88 I. C. C. 696.

Defendant contends in substance that as the second-class rates were applicable generally on cream from stations on the Minneapolis & St. Louis to Omaha and other similarly situated points at the time complainant's shipments moved, the rates assailed were not unreasonable. The reduced rates established subsequently to the movement of these shipments, it maintains, should not be taken as an admission that the rates charged were unreasonable.

The commodity rates established January 1, 1922, are based on the scale prescribed in *Beatrice Creamery Co. v. I. C. R. R. Co.*, 15 I. C. C. 109, as modified by the subsequent general increases. These rates do not include pick-up or delivery service, but apply only from station to station, a car-to-car transfer charge of 6 cents being added where the movement is over two different lines of railroad. The second-class rates generally contemplate a pick-up and delivery service, which was not accorded complainant's shipments.

In *Hanford Produce Co. v. Director General*, 80 I. C. C. 29, we found that from various points on the Minneapolis & St. Louis in Minnesota and South Dakota to Sioux City, Iowa, second-class express rates and certain specific-commodity express rates on cream, in 10-gallon cans, substantially equivalent to the aggregate of intermediate rates were unreasonable to the extent that they exceeded the commodity distance scale contemporaneously maintained by defendant on certain other lines throughout the upper Mississippi

Valley territory. In *Kirschbraun & Sons v. American Ry. Express Co.*, 88 I. C. C. 670, second-class express rates on cream, in 10-gallon cans, from Alvord, Iowa, Powersville, Mo., and certain points in South Dakota to Omaha were found unreasonable to the extent that they exceeded rates based upon the same distance scale plus a transfer charge of 6 cents. In those cases, as here, the movements were interline.

We find that the rates assailed were unreasonable to the extent that they exceeded 59 cents from Dallas Center and 65 cents from Albion; that complainant made the shipments as described and paid and bore the charges thereon at the rates herein found unreasonable; that it has been damaged in the amount of the difference between the charges paid and those that would have accrued on the basis of the rates found reasonable; and that it is entitled to reparation, with interest. Complainant should comply with Rule V of the Rules of Practice.

93 I. C. C.

No. 15366¹

GEORGE P. SEXAUER & SON v. DIRECTOR GENERAL, AS
AGENT, CHICAGO & NORTH WESTERN RAILWAY COM-
PANY, ET AL.

Submitted May 2, 1924. Decided December 11, 1924

Complaints asking for reparation on two carloads of coal shipped during Federal control from Zeigler, Ill., to Agar, S. Dak., and reconsigned en route, found barred by the statute of limitations. Complaints dismissed.

B. M. Hawley for complainant.

John F. Finerty and *Fred W. Heid* for defendants.

REPORT OF THE COMMISSION

DIVISION 4, COMMISSIONERS MEYER, EASTMAN, AND POTTER

BY DIVISION 4:

These cases were presented under the shortened procedure. No exceptions were filed to the report proposed by the examiner.

Complainant, a corporation dealing in grain and coal at points in South Dakota, by complaints filed March 19, 1923, alleges that the rates charged on two carloads of coal shipped in February and March, 1918, from Zeigler, Ill., to Agar, S. Dak., one reconsigned to Lake Preston, S. Dak., and the other to Miller, S. Dak., were unreasonable. We are asked to award reparation.

The cars were delivered March 29, 1918, and applicable freight charges were paid based upon the combination of rates to and beyond Tracy, Minn., the reconsigning point, in accordance with the rules of defendant's tariff in effect when the shipment moved.

Informal complaints covering these shipments were filed December 12, 1918, in the name of the Illinois Coal Traffic Bureau of Chicago, Ill., acting by its traffic manager. We advised the latter on February 15, 1919, as to the shipment to Miller, and on February 28, 1919, as to the shipment to Lake Preston, that the claims were not susceptible of informal adjustment, and that recourse lay through formal complaint. The claim papers were returned by us.

Correspondence seems to have taken place afterwards between the North Western, which was the delivering line, and the United States Railroad Administration, in which it appears that these

¹ This report also embraces No. 15366 (Sub-No. 1), *Same v. Same*,

claims were docketed for consideration by the Director General of Railroads under the name of the present complainant December 2, 1921. The railroad administration, on September 30, 1922, declined to agree to pay reparation and the complainant was so advised by us on October 9, 1922. The second submission to us was long after the time allowed by law for filing claims with this commission against the director general.

We find that the complaints were not filed within the period prescribed in section 206(c) of the transportation act, 1920, for the presentation of claims arising during the period of Federal control and are therefore barred. The complaints will be dismissed.

93 I. C. C.

No. 15102

UNITED CYCLE & SUPPLY COMPANY v. BALTIMORE &
OHIO RAILROAD COMPANY ET AL.

Submitted April 10, 1924. Decided December 11, 1924

Rate charged on bicycles, in carloads, from Middletown, Ohio, to Los Angeles, Calif., found applicable. Complaint dismissed.

B. H. Carmichael, Glenscor, Clewe & Van Dine, and F. W. Turcotte for complainant.

H. A. Scandrett, J. M. Souby, G. H. Smith, A. S. Halsted, and Fred E. Pettit, jr., for defendants.

REPORT OF THE COMMISSION

DIVISION 4, COMMISSIONERS MEYER, EASTMAN, AND POTTER

BY DIVISION 4:

This case was presented under the shortened procedure. Exceptions were filed by defendants to the report proposed by the examiner. Our conclusion differs from that recommended by him.

Complainant, a corporation dealing in bicycles at Los Angeles, Calif., by complaint filed July 17, 1923, alleges that the rate charged on two carloads of bicycles shipped, respectively, June 30 and November 15, 1921, from Middletown, Ohio, to Los Angeles, was inapplicable. An award of reparation is sought. Rates will be stated in amounts per 100 pounds.

The shipments consisted of bicycles, in crates, except that there was one box of unfinished bicycle forks in the second shipment. Charges were collected at the joint first-class rate of \$5.835 on the bicycles and joint third-class rate of \$4.20 on the unfinished bicycle forks. The rate on the unfinished bicycle forks is not in issue.

Contemporaneously there was in effect from and to these points a joint commodity rate of \$2.765, minimum 20,000 pounds, on the following:

VEHICLES (NON-SELF-PROPELLING, EXCEPT AS OTHERWISE PROVIDED), AND PARTS THEREOF, VIZ:

Vehicles, light and heavy, freight or passenger, and finished parts thereof (See Note 1),

NOTE 1. Rates named will not apply on self-propelling vehicles nor on pneumatic rubber tires.

The question is one of tariff interpretation.

Defendants state that the description "light and heavy, non-self-propelling passenger vehicles" has been long understood to refer to horse-drawn wagons, buggies, and the like and not to bicycles. Prior to March 15, 1918, there was a commodity rate on bicycles from and to these points that was higher than the rate then in effect on light and heavy non-self-propelling passenger vehicles, and upon its cancellation on that date, there was published a statement that no through carload commodity rates were in effect on bicycles, although the rate on light and heavy non-self-propelling passenger vehicles was continued in effect. Defendants have since amended the commodity description to read "Vehicles, as described in current western classification under the heading of 'vehicles, horse-drawn'." The amended description was published to become effective December 15, 1921, but was suspended, and became effective March 20, 1922. Effective September 30, 1922, defendants established a commodity rate on bicycles from and to these points higher than the rate then in effect on vehicles as described in western classification under the heading of "vehicles, horsedrawn." Defendants urge that the rate on light and heavy non-self-propelling passenger vehicles was never intended to apply on bicycles. Tariffs, however, are construed according to their language, and the intention of the framers is not controlling. *Boldt Co. v. P., C., C. & St. L. Ry. Co.*, 42 I. C. C. 308, 310; *Southern Veneer Asso. v. A. C. L. R. R. Co.*, 62 I. C. C. 669, 674.

Bicycles were classified under the heading of "hand vehicles;" and none of the vehicles included in this group were designated as passenger vehicles. For this reason defendants contend that the commodity rate on passenger vehicles was not applicable on bicycles. The word "passenger" appeared in the classification only in connection with the ratings on certain horse-drawn and motor vehicles, and the classification made no distinction between light and heavy passenger vehicles. Passenger vehicles, as such, were not classified.

Defendants contend that the words "otherwise provided" in the commodity rate item contemplated certain other specific provisions with respect to non-self-propelling vehicles, and that, as bicycles were specifically provided for in the classification, the rate assessed under the classification was applicable. The words "otherwise provided" were part of the clause "except as otherwise provided," which related to and qualified the expression "non-self-propelling." While there were no self-propelling vehicles named in the item to which this exception applied, parts of self-propelled vehicles were specified.

We are of the opinion that a bicycle is neither a freight nor a passenger vehicle and, therefore, find that the rate charged on the bicycles was applicable. The complaint will be dismissed.

No. 15075

TEXAS COMPANY v. ATCHISON, TOPEKA & SANTA FE
RAILWAY COMPANY ET AL.

Submitted October 27, 1924. Decided December 11, 1924

Rate applicable on gasoline and kerosene, in tank-car loads, from Tulsa, Okla., to Clayton, N. Mex., via Pueblo, Colo., found to have been unreasonable. Waiver of undercharges authorized and complaint dismissed.

L. C. Kemp, T. E. Duggan, and J. J. Shaw for complainant.

G. B. Ross, L. H. Hagerman, J. T. Bowe, and E. E. Whitted for defendants.

REPORT OF THE COMMISSION

DIVISION 4, COMMISSIONERS MEYER, EASTMAN, AND POTTER

BY DIVISION 4:

No exceptions were filed to the report proposed by the examiner.

Complainant, a corporation operating an oil refinery at Tulsa, Okla., alleges that the applicable rate on gasoline and kerosene, in tank-car loads, shipped from Tulsa to Clayton, N. Mex., via Pueblo, Colo., during the period June 22 to October 6, 1920, inclusive, was unreasonable and unduly prejudicial. We are asked to authorize waiver of alleged outstanding undercharges. Rates will be stated in cents per 100 pounds.

Defendants contend that the complaint is barred. The shipments were delivered at various dates between July 6 and October 15, 1920, inclusive. On July 6, 1923, in the District Court of the United States for the District of Colorado defendant delivering carrier began an action against complainant for the recovery of charges in respect of the same service, with the exception of one shipment made on October 2, 1920, in T C X car 5357, contending that the rate applicable was 82.5 cents. Section 16(3) of the interstate commerce act provides:

All complaints for the recovery of damages shall be filed with the Commission within two years from the time the cause of action accrues, and not after, unless the carrier, after the expiration of such two years or within ninety days before such expiration, begins an action for the recovery of charges in respect of the same service, in which case such period of two years shall be extended to and including ninety days from the time such action by the carrier is begun.

The complaint, as amended, was filed with us on July 24, 1923, or within 90 days from the time defendant carrier began its action. The complaint, therefore, is not barred, except with respect to the charges on T. C. X. car 5357, which was not included in the court proceeding and as to which complainant's right of action before us was not revived.

Following is a history of the rates via the various gateways from Tulsa to Clayton, together with distances, taken from exhibit of record:

Route	Gateway	Distance	June 24, 1918	June 25, 1918	Aug 26, 1920	July 1, 1922	At present
		<i>Miles</i>	<i>Cents</i>	<i>Cents</i>	<i>Cents</i>	<i>Cents</i>	<i>Cents</i>
A., T. & S. F.-C. & S.-----	Pueblo, Colo.-----	877	1 53	1 62.5	1 68	1 62.5	1 48.5
Do-----	Trinidad, Colo.-----	800	1 78	1 82.5	1 82.5	1 104	1 86
Do-----	Amarillo, Tex.-----	634	1 80	1 84.5	1 94.5	1 105.5	1 105.5
S. L. S. F.-S. L. S. F. of T-F. W. & D. C.-C. & S.-----	Quanah, Tex.-----	572	47	51.5	69.5	62.5	48.5
S. L. S. F.-Q., A. & P.-F. W. & D. C.-C. & S.-----	do-----	572	47	51.5	69.5	62.5	48.5
M., K. & T.-M., K. & T. of T.- F. W. & D. C.-C. & S.-----	Wichita Falls, Tex.-----	688	47	51.5	69.5	62.5	62.5
Do-----	Henrietta, Tex.-----	688	47	51.5	69.5	62.5	62.5
Do-----	Fort Worth, Tex.-----	769	47	51.5	69.5	62.5	62.5
M. V.-C., R. I. & P.-C. & S.-----	Colorado Springs, Colo.-----	1,079	47	51.5	69.5	62.5	62.5

¹ Local commodity rate to Independence, Kans.; joint fifth-class rate beyond.

² Rate applicable on complainant's shipments; local commodity rate to Independence, Kans.; joint fifth-class rate beyond.

³ Combination on gateway; no joint through rate.

It will be noted that, while during the period of movement all alternative routes except those of the Atchison, Topeka & Santa Fe, hereinafter called the Santa Fe, met the rate in effect via Quanah, the shortest route, the only route now doing so is that via Pueblo.

Clayton is a distributing center for complainant's products. Prior to July 16, 1919, complainant's shipments to Clayton moved via Fort Worth. Thereafter, until January 1, 1920, they moved via Quanah, but averaged 20.6 days in transit. From January 1 to June 22, 1920, they moved via Colorado Springs, the longest route, averaging 18 days in transit. Complainant routed the shipments here considered via Pueblo with a view to more expeditious movement, the shipments moving as routed and averaging 10.4 days in transit. Complainant paid freight charges on basis of the rate via Quanah, Fort Worth, and Colorado Springs under the impression that it was also applicable via Pueblo, and now contends that the rate applicable via Pueblo was unlawful to the extent that it exceeded the rate paid.

A rate of 51.5 cents prior to August 26, 1920, and 69.5 cents thereafter applied via Pueblo to Clayton from points on the Santa Fe as far east as Joplin, Mo., 875 miles. It also applied via Pueblo from Kansas City, Mo., to Colorado common points, including

Clayton, 825 miles, and Cheyenne, Wyo., 840 miles. The same rate applied via Pueblo from Tulsa to Colorado common points, including Cheyenne, 892 miles, but not including Clayton, 877 miles. A rate of 47.5 cents prior to August 26, 1920, and 64 cents thereafter applied from Tulsa via Amarillo to all points north on the Fort Worth & Denver City, including Dalhart, Tex., 588 miles. From Shreveport, La., 1,267 miles, and other more distant Louisiana producing points to Clayton via Pueblo the rates prior and subsequent to August 26, 1920, were 64.5 and 87 cents, respectively. Rates averaging 39.5 cents prior to August 26, 1920, and 53.5 cents thereafter were maintained by the Santa Fe from Tulsa to various points in Minnesota and eastern South Dakota, an average of 719 miles, but the transportation conditions to these points are not similar to those here considered.

The following table compares the earnings under the assailed rate in effect June 22, 1920, with the earnings under the foregoing contemporaneous rates via Pueblo:

From—	To—	Distance	Rate	Ton-mile earnings	Car-mile earnings ¹
		<i>Miles</i>	<i>Cents</i>	<i>Mills</i>	<i>Cents</i>
Shreveport.....	Clayton.....	1,267	64.5	10.18	26.98
Tulsa.....	Cheyenne.....	892	51.5	11.55	30.59
Joplin.....	Clayton.....	875	51.5	11.77	31.19
Kansas City.....	Cheyenne.....	840	51.5	12.26	32.49
Do.....	Clayton.....	825	51.5	12.48	33.08
Tulsa.....	do.....	877	² 51.5	11.74	31.12
Do.....	do.....	877	³ 62.5	14.25	37.77

¹ Based on weight of 53,000 pounds, the approximate average of complainant's shipments.

² Rate sought.

³ Rate assailed.

The allegation of undue prejudice is not sustained. No evidence was introduced by defendants.

We find that the rate assailed was unreasonable to the extent that it exceeded 51.5 cents prior to August 26, 1920, and 69.5 cents thereafter. Defendants will be expected to waive the outstanding undercharges, and the complaint will be dismissed.

93 I. C. C.

No. 15497

CLEVELAND AKRON BAG COMPANY *v.* WHEELING &
LAKE ERIE RAILWAY COMPANY ET AL.

Submitted August 18, 1924. Decided December 11, 1924

Reparation awarded on two carloads of woven paper fabric bags shipped in February, 1922, from Cleveland, Ohio, to San Francisco and Los Angeles, Calif.

A. Z. Baker for complainant.

Berne Levy, E. W. Camp, Fred H. Wood, James R. Bell, Elmer Westlake, James E. Lyons, and F. M. Mielke for defendants.

REPORT OF THE COMMISSION

DIVISION 4, COMMISSIONERS MEYER, EASTMAN, AND POTTER

BY DIVISION 4:

This case was presented under the shortened procedure. Exceptions were filed by complainant to the report proposed by the examiner. We have reached conclusions different from those recommended by him.

Complainant is a corporation engaged in the manufacture of bags and bagging, including woven paper fabric bags, at Cleveland, Ohio. By complaint filed December 21, 1923, it alleges that the fourth-class rate of \$3.665 per 100 pounds assessed for the transportation in February, 1922, of two carloads of woven paper fabric bags from Cleveland, one, weighing 32,779 pounds, to San Francisco, Calif., and the other, weighing 29,554 pounds, to Los Angeles, Calif., was unjust, unreasonable, and unduly prejudicial. Reparation only is asked. Rates will be stated in amounts per 100 pounds.

The bags were shipped in bales weighing, on the average, 280 pounds each, and total charges were collected from complainant in the sum of \$2,300.85. The shipment to San Francisco was routed over the Wheeling & Lake Erie and the Wabash to Chicago, Ill., the Chicago Great Western to Council Bluffs, Iowa, the Union Pacific to Ogden, Utah, and the Southern Pacific to destination. The shipment to Los Angeles was routed over the Wheeling & Lake Erie, the Wabash, and the Atchison, Topeka & Santa Fe. So far as the record discloses, the shipments moved as routed.

The bags comprising these shipments were made of twisted strands of wood-pulp paper woven into an open network, the meshes being about one-eighth of an inch square. They are used for sacking such commodities as walnuts, dry onions, potatoes, etc., but are apparently not well adapted for commodities liable to exude moisture. Their value on the Pacific coast is stated to have been from 14.5 to 20 cents each, dependent on size. The principal competition encountered is with burlap bags, which are said to have been contemporaneously worth about 12.5 cents each. Complainant points out that this difference in value at destination is probably accounted for to some extent by the difference in the freight rates on the two commodities.

At the time the shipments moved, defendants maintained a commodity rate on paper bags from Cleveland to San Francisco and Los Angeles of \$1.92, minimum weight 40,000 pounds, and a commodity rate on burlap, gunny, hemp, and jute bags, in bales, of \$1.835, minimum 40,000 pounds. The latter rate, subject to the general reduction of 1922, was established on woven paper fabric bags effective June 1, 1923, and it is to this basis that reparation is sought. Complainant contends that inasmuch as its bags were made of paper they come within the commodity description covering paper bags, above referred to, and were, therefore, legally entitled to the rate of \$1.92. However, in view of the fact that the classification provided a specific rating on woven paper fabric bags, we can not agree that the broad description used in connection with the commodity rate on paper bags took complainant's article out of the classification.

Complainant also offers the following comparative rates, contemporaneously applicable from Cleveland to Pacific coast points:

Commodity	Rate	Minimum weight
		<i>Pounds</i>
Dry goods, bagging, clayed cotton.....	\$1. 92	40, 000
Paper matting.....	2. 335	30, 000
Building paper.....	1. 665	40, 000
Books, envelopes, etc.....	1. 92	40, 000
Boxes, egg and fruit carriers.....	1. 835	40, 000
Napkins, toweling.....	2. 255	26, 000
Paper bag lining.....	1. 755	40, 000
Wrapping paper.....	1. 665	40, 000
Wrapping paper, oiled.....	1. 755	40, 000
Twine and cordage.....	1. 665	40, 000

Defendants contend that the foregoing rates, as well as those on paper and burlap bags, were water compelled, and they set forth the tonnage which moved by water from eastern defined territories to the Pacific coast, as compared with that by rail during the year

1922. While it is shown that in some cases the greater tonnage was by water, nevertheless this falls far short of proving that the rail rates from Cleveland, an inland point, were less than normal. Defendants offer no rate comparisons. They urge that the class rate was reasonable for these isolated shipments, and state that no shipments have moved under the reduced rate now in effect.

Regardless of the volume of movement, complainant was entitled to reasonable rates on its shipments. The car-mile earnings under the rate of \$1.92, minimum 40,000 pounds, contemporaneously in effect on paper bags, would have been 30 cents for a haul of approximately 2,600 miles.

Upon this record we find that the rate charged was unreasonable to the extent that it exceeded \$1.92 per 100 pounds, minimum car-load weight 40,000 pounds. We further find that complainant made the shipments as described, and paid and bore the charges thereon; that it was damaged thereby to the extent that the charges paid exceeded those which would have accrued at the rate herein found reasonable; and that it is entitled to reparation in the sum of \$764.85, with interest. An appropriate order will be entered.

93 I. C. C.

No. 14852

F. J. JONES ET AL. v. PENNSYLVANIA RAILROAD COMPANY ET AL.

Submitted June 20, 1924. Decided December 11, 1924

Rates charged on carloads of bicycles, from Westfield, Mass., and Little Falls, N. Y., to San Francisco, Calif., and from Middletown, Ohio, to Oakland, Calif., found applicable and not shown to be unreasonable or otherwise unlawful. Complaint dismissed.

John M. Desch for complainants.

Fred H. Wood, James R. Bell, G. H. Muckley, James E. Lyons,
and *Elmer Westlake* for defendants.

REPORT OF THE COMMISSION

DIVISION 4, COMMISSIONERS MEYER, EASTMAN, AND POTTER

BY DIVISION 4:

This case was presented under the shortened procedure. Exceptions were filed by complainants and defendants to the report proposed by the examiner, and the case was orally argued. Our conclusion differs from that recommended by him.

F. J. Jones and the Appeal Manufacturing & Jobbing Company, two of the complainants in this case, are dealers in bicycles and other merchandise at Oakland and San Francisco, Calif., respectively. E. O. Hall & Son, Limited, is a corporation with its principal place of business in Honolulu, T. H.

By complaint, filed April 16, 1923, it is alleged that the first-class rates applied to various carload shipments of bicycles, crated, from eastern points of origin to Oakland and San Francisco, were unjust, unreasonable, unduly prejudicial, and inapplicable to the extent that they exceeded commodity rates contemporaneously in effect on passenger vehicles. The issue presented is one of tariff interpretation only. Reparation is sought. Rates will be stated in amounts per 100 pounds.

The following statement, compiled from the record, describes the shipments. Those shipments originating at Middletown were forwarded to Oakland; the others to San Francisco,

Date of shipment	Date of delivery	Point of origin	Consignee	Weight (pounds)	First-class rate applied
June 3, 1920	July 8, 1920	Middletown, Ohio..	F. J. Jones.....	17,900	\$4.375
June 30, 1920	July 19, 1920	do.....	do.....	13,000	4.375
July 1, 1920	July 27, 1920	do.....	do.....	12,800	4.375
July 31, 1920	Aug. 28, 1920	Westfield, Mass.....	E. O. Hall & Son (Ltd.).....	23,038	4.625
Jan. 7, 1921	Jan. 27, 1921	Little Falls, N. Y....	Appeal Mfg. & Jobbing Co....	17,586	6.165

Charges of \$4,061.56 were collected.

At the time of movement, Agent Countiss's westbound tariff I. C. C. No. 1067, or reissues, contained commodity rates of \$2.075, \$2.315, and \$3.085, minimum weight 20,000 pounds, from Middletown to Oakland, from Westfield to San Francisco, and from Little Falls to San Francisco, respectively, under the following description:

VEHICLES (NON-SELF-PROPELLING, EXCEPT AS OTHERWISE PROVIDED), AND PARTS THEREOF, VIZ:

Vehicles, light and heavy, freight or passenger, and finished parts thereof (See Note 1).

NOTE 1 Rates named will not apply on self-propelling vehicles nor on pneumatic rubber tires.

Complainant contends that this description included bicycles; that the commodity rates should have been applied; that the word "vehicle" includes every description of carriage or other artificial contrivance used, or capable of being used, as a means of transportation on land; that bicycles can not be considered in any other class than that of a "light passenger vehicle, non-self-propelling," and as such is entitled to the rate provided for such articles; and that it is a well-established rule that the application of a tariff must be drawn from the words used, which if ambiguous, must be construed strictly against the framer of the tariff.

Defendants call attention to the character of the articles listed under "vehicles non-self-propelling, etc." They claim that none of the descriptions applies to any article analogous to or resembling a bicycle; that the description "vehicles, light and heavy, freight or passenger," is an old tariff description, applicable on non-self-propelling vehicles and has long been understood by the trade as referring to farm wagons, buggies, and analogous articles; that there were also concurrently in effect several other rate items in westbound transcontinental tariffs naming rates on and describing "vehicles non-self-propelling," and that consolidated freight classification I. C. C. No. 14 provides for a rating on bicycles under the caption "vehicles, hand," page 405, item 5.

We are of the opinion that a bicycle is neither a freight nor a passenger vehicle, and we therefore find that the rates charged on the shipments were applicable and have not been shown to be unreasonable or otherwise unlawful. The complaint will be dismissed.

No. 15556

E. C. LEE FARMS COMPANY v. LOUISVILLE & NASHVILLE
RAILROAD COMPANY ET AL.

Submitted September 26, 1924. Decided December 11, 1924

Rate on strawberries, in carloads, from Castleberry, Ala., to Mansfield, Ohio,
found unreasonable. Reparation awarded.

P. P. Forrester for complainant.

Ben. F. Morris for defendants.

REPORT OF THE COMMISSION

DIVISION 4, COMMISSIONERS MEYER, EASTMAN, AND POTTER

BY DIVISION 4:

This case was presented under the shortened procedure. No exceptions were filed to the report proposed by the examiner, but our conclusion differs from that recommended by him.

Complainant in this proceeding alleges that the rate charged on one carload of strawberries, shipped from Castleberry, Ala., to Mansfield, Ohio, on April 20, 1922, was unjust, unreasonable, unjustly discriminatory, and unduly prejudicial, and in violation of the long-and-short-haul provision of section 4 of the interstate commerce act. We were asked to prescribe a rate for the future not to exceed the rate of \$1.29 contemporaneously maintained by defendants on strawberries from Castleberry to Sandusky, Ohio, a farther distant point to which Mansfield is intermediate, but as that rate was established to Mansfield on April 22, 1923, only an award of reparation is now sought. An overcharge by the Baltimore & Ohio resulting from the use of a higher minimum weight than applicable, has been refunded. Rates are stated in amounts per 100 pounds.

The shipment, consisting of 303 crates and weighing less than the applicable minimum of 17,000 pounds, moved over the Louisville & Nashville to Cincinnati, Ohio, and the Baltimore & Ohio beyond. Charges ultimately paid were based on the applicable combination rate of \$1.365, composed of 90 cents to Cincinnati and 46.5 cents beyond.

The \$1.29 rate to Sandusky was a joint commodity rate. The fourth-section departure was protected by an appropriate fourth-section application. Complainant's case is based mainly on the fact that defendants maintained this lower rate to a farther distant point

to which the movement is directly through Mansfield, and to which the transportation conditions are the same, and the further fact that they later reduced the Mansfield rate to that basis. It contends that although the loading of strawberries is light, nevertheless the rate to Sandusky was not lower than it properly should have been, and that the rate charged to Mansfield, a less distant point, was unreasonable because it exceeded that rate.

The Baltimore & Ohio admits in its answer that the rate charged was unreasonable to the extent that it exceeded the basis subsequently established. The Louisville & Nashville, which will hereinafter be referred to as defendant, takes the opposite view, and insists that the rate is not unreasonable *per se* or otherwise unlawful. This defendant contends that the earnings of 31.8 mills per ton-mile under the rate charged for the average haul of 885 miles, are not excessive for the expensive expedited service required in the transportation of strawberries. It contends that the Ohio River combination is the normal and proper basis for rates between southern and central territories, and cites various cases in which it claims that we have so found; that where joint rates from the South into this territory now differ it is generally the result of the varying changes in the factors north and south of the river, under the recent general adjustments, without corresponding changes in the joint rates. The rate to Sandusky was originally established on the Ohio River basis and was then the same as to Mansfield and slightly less than to Cleveland, Ohio, and Detroit, Mich. The rate of \$1.29 is the Buffalo, N. Y., basis, which is maintained as a maximum at other lake ports such as Detroit, Cleveland, and Sandusky. Defendant admits that the rates on fruits and vegetables to this territory generally are in need of adjustment, and states that the Sandusky basis was published to Mansfield to correct the fourth-section departure pending a general revision.

We are of opinion that there is no justification for charging a higher rate on strawberries from Castleberry to Mansfield than contemporaneously maintained from that point to Buffalo, Detroit, Cleveland, and Sandusky; and that no evidence has been presented which adequately rebuts the presumption that this higher rate was unreasonable. We find that the rate charged was unreasonable to the extent that it exceeded \$1.29; that complainant made the shipment as described, and paid the charges thereon; that it was damaged in the amount of the difference between the charges paid and those that would have accrued at the rate herein found reasonable; and that it is entitled to reparation in the sum of \$12.75, with interest.

An appropriate order will be entered.

ASSIGNED CARS FOR BITUMINOUS COAL MINES

No. 12530

IN RE DISTRIBUTION AMONG COAL MINES OF PRIVATELY OWNED CARS AND CARS FOR RAILROAD FUEL

Submitted December 19, 1923. Decided December 23, 1924

1. Paragraph (12) of section 1 of the interstate commerce act held to apply to cars placed at carrier-owned and output-contract mines, and can not be relied upon to show that the Congress exempted such cars from the other provisions of section 1 requiring reasonable rules of distribution, and the provisions of section 3 prohibiting unduly preferential or prejudicial rules.
2. Findings in former report, 80 I. C. C. 520, that the practice of respondents in assigning private cars, and system or foreign-line cars for railway fuel, to bituminous-coal mines in excess of the ratable share contemporaneously distributed to bituminous-coal mines upon their lines which do not receive assigned cars, found for the future to be unjust and unreasonable, and unjustly discriminatory against, and unduly prejudicial to mines not receiving assigned cars, and unduly and unreasonably preferential of mines which are furnished such cars in excess of the ratable proportion, and that cars specially placed by order of the commission under the provisions of paragraph (15) of section 1 of the act may properly be treated as assigned cars, and need not be taken into account in determining the ratable distribution when the order of placement so requires, affirmed.
3. Order entered in this proceeding June 13, 1923, the effective date of which has been postponed until January 15, 1925, permitted to become effective on March 1, 1925.

Henry Wolf Bikelé, W. S. Bronson, Kenneth F. Burgess, H. T. Dick, O. W. Dynes, R. V. Fletcher, F. W. Gwathmey, Walter McFarland, W. A. Northcutt, C. C. Paulding, H. R. Preston, Theodore W. Reath, C. J. Rixey, C. M. Sheafe, jr., and H. A. Taylor for respondents, members of the American Railway Association; *J. H. Fishback* for Canadian National Railways; *Joseph H. Nuelle* for New York, Ontario & Western Railway Company; and *Eugene S. Williams* for Western Maryland Railway Company, respondents.

August G. Guthrie and James W. Carmalt for Berwind-White Coal Mining Company, Westmoreland Coal Company, New River & Pocahontas Consolidated Coal Company, Pennsylvania Coal & Coke Corporation, Pittsburgh Plate Glass Company, Public Service

Electric Company, Seaboard By-Product Coke Company, Chicago By-Product Coke Company, Donner Union Coke Corporation, Rainey-Wood Coke Company, and Island Creek Coal Company; *Hugh F. Smith, F. C. Slee*, and *Ralph J. Baker* for Seaboard By-Product Coke Company, Chicago By-Product Coke Company, Donner-Union Coke Company, and Rainey-Wood Coke Company; *Wayne Johnson* for Pennsylvania Coal & Coke Corporation; *Richard Jones, jr.*, for Republic Iron & Steel Company; *L. A. Manchester* for Youngstown Sheet & Tube Company; *Paul D. Cravath, Hoyt A. Moore*, and *Frederick L. Ballard* for Bethlehem Steel Corporation and subsidiaries; *Richard V. Lindabury, Charles McVeagh*, and *Charles S. Belsterling* for Illinois Steel Company, Carnegie Steel Company, American Steel & Wire Company, National Tube Company, American Sheet & Tin Plate Company, United States Coal & Coke Company, United States Fuel Company, and H. C. Frick Coke Company; *Clifford H. Browder* for International Harvester Company and Wisconsin Steel Company; *Horace Andrews, W. P. Belden*, and *John B. Putnam* for Cleveland Cliffs Iron Company, Steel Company of Canada, Limited, Perry Iron Company, and Pickands, Mather & Company; *C. B. Longley* for Ford Motor Company; and *E. T. Butler* for Trumbull Steel Company and Trumbull Coal Company.

Russell B. Burnside and *Charles G. Blakeslee* for Public Service Commission of New York.

Shearman & Sterling, Samuel E. Wolf, William C. Speer, James L. Quackenbush, M. S. Sloan, J. C. Edwards, and *W. L. Pepperman* for various public utilities.

Butler, Lamb, Foster & Pope and *Ernest S. Ballard* for National Coal Association; *A. M. Liveright* for Central Pennsylvania Coal Producers' Association; *R. W. Ropiequet* for Illinois Coal Traffic Bureau; *L. C. Boyle* and *George N. Brown* for Southern Ohio Coal Exchange; *C. D. Boyd* for Harlan County Coal Operators Association and Hazard Coal Operators Exchange; *E. L. Greever* and *Greever & Gillespie* for Pocahontas Operators Association and Operators Association of Williamson Field, W. Va.; *S. C. Higgins* for New River Coal Operators' Association; *A. R. Yarborough* for Kanawha Coal Operators' Association; *C. J. Neekamp* for Northeast Kentucky Coal Association; *E. J. McVann* for Northern West Virginia Coal Operators' Association; *W. L. Hammond* for White Star Coal Company and Detroit City Gas Company; and *Van A. Bittner* and *W. Jett Lauck* for International Union, United Mine Workers of America.

REPORT OF THE COMMISSION ON FURTHER HEARING

AITCHISON, *Commissioner*:

This case is before us on further hearing. On March 22, 1921, we instituted an investigation upon our own motion, with respect to the reasonableness and propriety of the present car distribution rules of the respondents, i. e., all the steam-railroad carriers subject to our jurisdiction, in so far as such rules apply to privately owned coal cars and cars furnished for railroad-fuel coal, with a view to prescribing such just or reasonable rules or regulations as might appear to be necessary.

On June 13, 1923, after extended hearings and argument, we issued our report, 80 I. C. C. 520, in this proceeding. The rule as proposed by respondents at the hearings provided in substance that assigned cars, namely, cars for railway fuel and private cars, must be placed at the coal mines to which assigned; that if the assigned cars thus placed at a mine should equal or exceed the mine's pro rata share of the available car supply for that day it should not be entitled to any unassigned cars; but that if the number of assigned cars placed at the mine should be less than its pro rata share for that day it should be given enough unassigned cars in addition to its assigned cars to make up its pro rata share. This rule and the classes of cars it covers are more particularly described in our report, pages 522 *et seq.* We there held that the rules proposed by the respondents do not in terms contravene paragraph (12) of section 1 of the act, and found:

that in the distribution of cars for transportation of coal among the bituminous coal mines served by the respective respondents, and each of them, whether located upon the line of a respondent or customarily dependent upon it for car supply, any rule, regulation, or practice of the respondents, or any of them, whereby private cars or cars for the loading of bituminous coal for railway-fuel purposes are placed at any such mine in excess of the pro rata allotment and distribution of cars for coal loading currently made to any other of such mines which do not receive private cars or cars for railway fuel and which are on the same division or district established by such respondent for the distribution of cars, is and for the future will be, unjust and unreasonable, and unduly and unreasonably preferential of such mines receiving private cars or cars for railway fuel in excess of such allotment, and unjustly discriminatory against and unduly prejudicial to such other mines not receiving private cars and cars for railway fuel. We further find and conclude that all cars should be distributed by such respondent to all mines on such district or division on a pro rata basis; and that if cars are assigned or consigned to any of such mines, and if they are placed at the mines to which they are assigned or consigned, they should be so placed that every mine on the same division or district should receive the same pro rata share of the total number of available cars, whether assigned, consigned, or unassigned, which are distributed to all mines on such division or district, and that all such assigned or consigned cars should be counted and charged against the mines at which

they are placed in the same manner and to the same extent that unassigned cars are counted and charged. It is not intended that this finding shall preclude the commission hereafter, in proper cases, in the exercise of the emergency powers conferred upon it by paragraph (15) of section 1 of the act, from requiring the placement of cars for bituminous-coal loading at any mine or mines in excess of the current percentage allotment made to mines generally upon the lines of the same carrier, or upon the same division, when the order or direction for placement shall so provide.

There appears to be no reason for the continuance of the investigation as to carriers serving solely anthracite coal mines, and the present investigation, as far as it in terms covers the distribution of cars at anthracite mines, will be discontinued.

By an order issued at the time of our report, June 13, 1923, we required the respondents, on or before September 1, 1923, to discontinue the regulation and practice found to be unreasonable and unjustly discriminatory in the report and thereafter to establish rules and practices in conformity with our finding. We thus required the carriers to abolish the assigned-car rule.

Soon after our report was issued, and before the effective date of our order, petitions for rehearing were filed by the respondents and by a number of owners and users of private cars. The case was reopened upon the petitions filed herein, a hearing was held, briefs were filed, and the case was orally argued. It is now before us upon the voluminous record made in the original hearing and on the further hearing. Pending the disposition of this case we have from time to time postponed the effective date of our original order. On the further hearing, as in the original hearing, the evidence related to distribution of cars to bituminous mines as distinguished from anthracite mines and our present determination will be so limited.

We shall first deal with assigned cars for railway fuel, and then with assigned private cars.

ASSIGNED CARS FOR RAILWAY FUEL

In the original proceeding respondents contended that on any particular day a carrier should be permitted to assign cars to a mine for railway fuel in excess of the mine's pro rata share of cars even though on the following day the mine should ship commercial coal. The carriers now take the position, however, that without conceding the day-to-day assignment of cars to be unlawful, they can get along if permitted to assign cars to mines the entire output of which they take for a substantial period. They now contend only for a rule which will permit the unrestricted placement of cars under the assigned-car rule to such mines. Respondents in argument assume the period to be at least six months or a year.

The principal contentions of the carriers are (1) that we are without authority under the interstate commerce act to abolish the assigned-car rule as applied to cars placed at mines owned by a railroad and furnishing it their entire output for an extended period, six months or more, and to mines from which a carrier purchases the entire output for a like period, and (2) that if we have such authority, the record shows that the rule is reasonable and not unjustly discriminatory.

Situations of individual carriers summarized.—In their petitions for rehearing respondents asked that the case be reopened and evidence heard for the purpose of ascertaining whether the experience of the carriers shown in the table on page 536 of our original report as not using assigned cars, is such as to justify the abolition of the assigned-car rule. On further hearing witnesses representing eight of the 52 carriers listed in this table testified as to the individual situations on their respective lines. We summarize the showing as to the eight as follows:

The *Great Northern* has not found it necessary to follow the assigned-car practice in securing its coal. Our table is correct in showing that it was not assigning cars in 1920 and on October 1, 1922. For periods of a few days at times the carrier insists that its fuel coal be loaded by the mines in preference to commercial coal. About 53 per cent of the fuel which the Great Northern uses is obtained from the docks at the head of the lakes and is consumed on its lines east of Wolf Point, Mont. Box cars are used to a considerable extent for this movement. The remainder of its fuel is obtained from Montana mines, the largest one of which it owns, and from a mine at Fernie, British Columbia. About 94 per cent of the coal produced west of Wolf Point is used for company fuel. Part of this comes from small mines with which the carrier has made partial-output contracts to enable them to continue in operation. During the coal strikes of 1919 and 1922 some coal was received by the Great Northern from mines in Illinois. From September, 1922, to April, 1923, between 11,000 and 12,000 cars of coal were received from this source. About 11 per cent of this coal came in cars which this carrier delivered to the Chicago, Burlington & Quincy to be placed at a mine at Herrin, Ill., with which the Great Northern had a contract for the entire output. The witness produced by this company was not informed as to whether the cars which were thus delivered were placed in excess of the mine's distributive share.

The *Chicago & North Western* originates on its line from 200 to 400 cars of fuel per day for its own use, and from 20 to 200 cars of commercial coal. On an average 30 per cent is commercial and 70 per

cent fuel coal. The greater portion of the company's fuel comes from its own mine in Macoupin County in central Illinois. A part of its supply comes from mines which it owns near Buxton, Iowa, and from other mines located in that State and in Wyoming. This company does not follow the assigned-car practice in obtaining its coal. This was true in 1920 and in October, 1922, as shown in the table in our report.

The *St. Louis-San Francisco* has not followed the assigned-car practice in obtaining fuel coal from mines on its own line. In case of car shortage, the mines give the railroad preference in filling orders for coal. About 20 per cent of its fuel supply is obtained under partial-output contracts from mines off its line, located on short lines in Illinois near St. Louis, except a mine located on the Louisville & Nashville, the output of which is taken jointly by the St. Louis-San Francisco and the Missouri-Kansas-Texas. These two lines furnish a full car supply, if needed at the mine on the Louisville & Nashville, without reference to the existing car supply on that road. Cars are also furnished for loading at the other off-line mines, but the witness called by this carrier was not informed as to whether such cars were placed in excess of the mines' distributive share. The Seaboard Air Line furnishes cars for its coal at mines on the St. Louis-San Francisco. If these mines are given more than their percentage allotment, the excess is equalized as promptly as possible. Of the St. Louis-San Francisco's fuel requirements 25 per cent is cared for by oil. Except in times of anticipated mine suspension this company does not store coal.

The *Atchison, Topeka & Santa Fe* followed the assigned-car practice in 1920 and was following it on October 1, 1922, in the placement of stock and ballast cars at mines on its line. The company owns 6,000 hopper-bottom stock cars and 2,500 drop-bottom ballast cars. These, the witness for the company testified, are not acceptable to commercial coal loaders, but it is shown that they are loaded at mines which also ship commercial coal and can be dumped in the same manner as ordinary coal cars. They are used exclusively in times of car shortage for company fuel, and are counted against the mines under the assigned-car rule. At other times ordinary gondolas are used for this purpose. This company consumes about 140 cars of coal a day, 90 per cent of which is secured from mines on its own line, including its own mines. In times of car shortage about two-thirds of the fuel coal from mines on its line moves in the stock and ballast cars, the remainder in other cars distributed on a pro rata basis. Coal from off-line points is secured from a mine on the Burlington and from one on the Minneapolis & St. Louis. The latter furnishes about four cars a day in Atchison, Topeka & Santa

Fe cars. The witness was not informed as to whether these cars are placed at the mine in excess of the commercial ratable distribution. About 60 per cent of the company's total fuel requirements is met by the use of oil.

The *Carolina, Clinchfield & Ohio* is shown in our original report as assigning cars for its fuel purposes in 1920, and as not following this practice on October 1, 1922. However, the record on further hearing shows that in 1920 this company did not find it necessary to resort to the assigned-car practice. During the almost continuous car shortage that year, when the supply ran as low as 50 per cent for extended periods, the company was able to secure preferential loading of its coal at the mines with which it contracted. In other words, the mine operator deferred the filling of commercial orders until the railroad's fuel needs were met. Beginning in November, 1922, the carrier began to assign cars, as it was unable to get its contracts filled during the car shortage then existing, and because the coal company with which it contracted for fuel refused to fill its orders in preference to commercial customers. It assigned the cars to a mine the output of which was taken jointly by it and the Southern. It consumes coal at the rate of about 20 cars per day. It has on its line 25 mines, producing 350 cars of coal per day, which represents 65 per cent of the total tonnage handled. It owns sufficient cars to care ordinarily for the output of the mines on its line. These cars normally move to southeastern territory and come back regularly. During 1922, however, owing to the coal miners' strike, many of its cars were diverted from their usual channels and moved to western territory. This resulted in a considerable shortage. No coal is stored by this company.

The *Western Maryland* obtains its coal under yearly contracts from four or five mines having a total capacity of about 50 cars per day. These mines are located on its line or on lines over which it has trackage rights. They produce no commercial coal. This carrier follows the assigned-car practice when it considers this necessary. In October, 1922, it was not securing its fuel coal in assigned cars but did so in 1920. A car shortage developed the first week in November, 1922, and lasted until April, 1923. During this period assigned cars were used to cover the fuel needs of this carrier.

Subsequent to our former hearings in November, 1922, the *Seaboard Air Line* arranged with the St. Louis-San Francisco, Louisville & Nashville, and Birmingham Belt to assign cars for its fuel supply to mines on those roads in the Alabama field. Cars were furnished by the Seaboard under this arrangement. The witness produced by this carrier had no information as to whether the roads to which such cars were delivered placed the cars in excess of the

pro rata share of such mines, but stated that since the cars have been furnished by his road to mines on lines of these carriers, an adequate and dependable supply of the proper grade of coal has been secured.

The table in our report is correct in showing that the *Delaware, Lackawanna & Western* did follow the assigned-car practice in 1920 and was not following this practice on October 1, 1922. On the latter date it had a surplus of about 1,700 cars of bituminous coal on line, which, following the coal miners' strike, had been secured principally from England and in part from Nova Scotia and Virginia. This surplus was greatly reduced toward the latter part of 1922, and the carrier then resumed the assigned-car practice. It regarded this as the only practicable means of securing its coal during the car shortage then existing. This carrier's fuel supply of about 100 cars a day is secured from mines on foreign lines in Ohio and Pennsylvania. About 60 per cent of its supply is secured from output-contract mines on the assigned-car basis and 40 per cent from partial-output mines without assigned cars.

In our report, page 541, we pointed out that certain important carriers, including the Pennsylvania, New York Central, and Louisville & Nashville, had not presented any statement of the reasons which impelled them to adopt or maintain the assigned-car practice. In their petition for rehearing respondents referred to this statement, and asserted that if we considered the record deficient in this respect, their petition should be granted in order that information might be supplied as to the practice and experience of these railroads. On the further hearing the New York Central and its affiliated company, the Michigan Central, introduced evidence as to the individual situations on their lines. The Pennsylvania and the Louisville & Nashville offered no testimony, but announced that they would rely upon the evidence introduced by respondents in the original hearing. Certain other carriers not shown in the table in our report introduced evidence on further hearing. The individual situations shown will be briefly reviewed.

The *New York Central Railroad* consumes normally 8,000,000 tons of coal per year, 74 per cent of which is obtained under contracts which call for the total output of the mines for a year, and cover the carrier's minimum requirement of 450 cars per day. These mines are on the assigned-car basis. Among these mines are nine owned by the carrier through a subsidiary company, the Clearfield Coal Corporation. The company mines supply the carrier with about 120 cars of coal a day at a price 7 cents per ton less than that paid to other operators in the same district. Different kinds of coal are used on various divisions of the carrier, and the engines are drafted accordingly. The carrier claims that in time of sus-

tained car shortage it is necessary to use assigned cars to insure delivery of the proper quality of coal. During the winter the carrier's daily consumption of coal reaches a maximum of 600 cars, and the additional coal is purchased from partial-output mines and obtained without assigned cars. In October, 1923, this carrier had in storage 750,000 tons of coal or about 43.5 days' supply. It customarily carries from six to eight days' supply in cars, some of which is hauled 500 to 600 miles. The witness for this carrier stated that if not permitted to assign cars in case of a sustained car shortage, it would be necessary to increase the supply in cars to from 10 to 12 days, thereby tying up approximately 2,500 additional cars for fuel.

The *Michigan Central* secures about 24 cars per day of its fuel requirements of 140 cars from mines on its line in Michigan. It has two contracts for the total output of mines on foreign lines. Other contracts are made jointly with other subsidiary lines of the New York Central. Its fuel supply in Michigan, as well as at other mines from which it takes a partial output, are secured without the use of assigned cars. Before placing contracts, invitations to bid are sent to between 200 and 300 operators. Contracts are made for the coal year. Under the assigned-car rule, this carrier is able to secure coal from approved mines which guarantee a regular source of supply. From 1912 to 1917 it secured its entire supply without the use of assigned cars. The carrier contends that without assigned cars it would be unsafe to carry less than 10 days' supply under load, while with the assigned car about six days' supply is kept under load.

The *Erie Railroad* consumes approximately 3,800,000 tons of bituminous coal a year. Approximately 54 per cent is from mines on foreign railroads, and the remainder comes from mines on its own line. Among the latter are 10 mines operated by two companies, the stock of which is owned by the carrier. These 10 mines furnish approximately 40 per cent of the carrier's total fuel supply, and also ship small quantities commercially. Only a small percentage of the coal produced on the line is commercial coal. This carrier purchases its coal under contracts providing for delivery of a maximum and minimum tonnage, the minimum being 20 per cent less than the maximum. The carrier obligates itself to take the minimum, but may take the maximum. In securing its coal the carrier follows the assigned-car practice. A large amount of its coal originates on the Pittsburgh & Shawmut and is obtained through brokers. The Erie delivers its cars to that carrier for use by the brokers who designate the mines at which the cars are to be placed on the assigned-car basis. At the time of the hearing in

October, 1923, this carrier had stored about 60 days' supply of coal on the ground.

The *Hocking Valley* consumes normally about 25 cars of coal a day, which it secures from three of the 150 to 200 bituminous mines which it serves. One of the three mines furnishes its entire output to the carrier, the other two only part of their output. In making contracts for the output of mines the period provided is not less than six months. The assigned-car practice is followed as to output mines, but not as to partial-output mines. The carrier owns 350 side-dump cars, which are classed by it as work cars, and used exclusively in securing its fuel coal. These cars, with others of the same kind, were formerly used in commercial service. The others, however, were converted in 1918 into solid-bottom cars to make them more suitable for commercial use. The carrier's coaling stations have been constructed for the use of side-dump cars, and are not suitable for the use of cars of other types. The 350 side-dump work cars are used at both the total-output mines and the partial-output mines. However, they are not placed in excess of the distributive share of the partial-output mines. From 60 to 70 cars of locomotive fuel are ordinarily carried at the fuel stations each day. About 50,000 tons of coal were stored on the ground between February and July of 1923. Some of this coal had to be removed because of spontaneous combustion.

The *Chicago, Rock Island & Pacific system* consumes about 3,500,000 tons of coal per year. About 40 per cent of this coal is secured from 15 of the 72 mines on its line. The remaining 60 per cent is secured from mines in Illinois on the Chicago & Alton, the Chicago & Illinois Midland, and the Louisville & Nashville; from mines in Colorado on the Colorado & Southern and Denver & Rio Grande, and from mines in New Mexico on the El Paso & Southwestern. This coal is used as nearly as possible to point of production. The carrier sends cars under special assignment to the mines on foreign lines, except to those in Colorado and New Mexico, where 50 per cent of the car requirements are furnished. This, however, is under an agreement between the railroads, and includes cars for commercial loading as well as cars for railroad fuel. The carrier follows the assigned-car practice as to mines on its own line, including four or five mines it owns in Oklahoma, which supply about 5 per cent of its fuel coal. They also engage in commercial business. This is true of other mines on its line furnishing it with coal. The witness produced by this company was not informed as to whether cars were placed for its fuel loading at mines on foreign lines in excess of their pro rata share of cars.

In our former report, at page 541, we described briefly the practices of the *Chicago, Burlington & Quincy* with respect to its fuel supply. The capacity of the mine which it owns in southern Illinois has since been increased from between 4,200 and 4,500 tons to between 5,500 and 6,000 tons per day, and is expected ultimately to reach a capacity of 7,000 tons per day. From January to July, 1923, the lowest price which the carrier paid for coal from mines other than its own mine was \$2.96 per ton in May, and the highest was \$3.19 per ton in January. The prices thus paid were approximately 40 cents per ton higher than the cost of coal from its own mine. This mine is owned through a subsidiary company. The authorities of Illinois authorized such ownership as in the public interest provided that the price paid by the carrier for the coal purchased from the coal company should not exceed the cost of production plus interest charges and depreciation and provided that no coal should be supplied to the general commercial trade. The company assigns cars only to its own mine and to a mine whose output is taken by another carrier in cars furnished by the latter. About 7,000 of the 13,500 tons which the *Chicago, Burlington & Quincy* consumes daily is procured without assigned cars from mines the partial output of which it takes. During slack periods, or when requirements are less, its own mine is closed down because the contract mines meet its requirements. This carrier stores coal, but has found it impracticable to store fine coal. On October 1, 1923, 648,685 tons of coal were in storage at 20 different points. On lines east of the Missouri River, the carrier operates 121 self-firing locomotives which burn fine coal. This kind of coal is most satisfactory from the standpoint of price and helps commercial mines to dispose of a grade for which there is frequently no market. In a number of instances the carrier obtained coal from mines other than its own to improve conditions and realize more freight revenue.

In our original report, page 537, we stated that the *Chicago Great Western* owned a mine on the Illinois Central and had provided itself with hopper-bottom cars which were assigned to the mine to take care of its fuel needs. The controlling interest in this mine was acquired in 1917. The Madison Coal Corporation, a subsidiary of the Illinois Central, operates the mine and furnishes the entire output to the *Chicago Great Western* for fuel. About 80 per cent of the carrier's daily consumption of 2,300 tons is obtained in the hopper-bottom cars from this mine on the assigned-car basis. The carrier has 21 modern mechanical coaling stations on its line, for which these cars are especially adapted and at which they can be

unloaded at a cost about 14 cents per ton less than the cost of unloading from miscellaneous equipment.

The practices of the *Chesapeake & Ohio* were explained in our report at page 540. Since the original hearing it has reduced the number of cars daily under load with fuel from 1,200 to 700, or approximately 1,300 loaded and empty cars out of an ownership of 40,000 coal cars. This was accomplished by discontinuing the practice of concentrating fuel coal at division points, from which it was rehandled. It now moves direct to the consuming point. The locomotives of the carrier are designed to use nut and slack coal largely. This represents approximately one-third of a mine's output, lump and egg representing the remainder. The witness produced by this carrier expressed the opinion that preferential contracts calling for nut and slack are not practicable, since lump and egg coal must be produced and shipped at the same time; and that it would not be practicable to supply the kind of coal in the type of car suited for unloading at the various coaling stations if pro rata distribution should be required. During the first six months of 1923, when a car shortage existed, 25,148 cars were supplied for company fuel. The witness testified that if these cars had been distributed with other cars on a pro rata basis the car supply at commercial mines would have been increased 2.2 per cent. From July to September the increase, it was testified, would have been 1 per cent. This carrier will not receive assigned cars from a foreign line unless they are delivered in cuts of 15 cars or more and are for placement at a mine or mines having output contracts with the foreign line for a period of not less than six months. On October 1, 1922, the Atlantic Coast Line, the Richmond, Fredericksburg & Potomac, and the Detroit & Mackinac had contracts for fuel supply with mines on this carrier's rails but cars were not assigned to any of these mines until the latter part of the year, because of the condition of the motive power of the Chesapeake & Ohio. Since that time cars have been assigned for the Atlantic Coast Line and the Detroit & Mackinac, but not for the Richmond, Fredericksburg & Potomac because that carrier has been unable to meet the requirements of the Chesapeake & Ohio.

The *Canadian National*, which includes the Grand Trunk, referred to at page 540 of our report, obtains from 35 to 40 per cent of the 8,500,000 tons of coal it consumes per year from mines in the United States. About 20 per cent of the entire supply is from two mines which it owns in Ohio, one on the Pennsylvania and the other on the Baltimore & Ohio. Both are on the assigned-car basis. The cars are furnished by the Canadian National. These mines were selected because of the quality of coal produced. The carrier ob-

tains approximately 1,000,000 tons of fuel coal per annum in this country, without assigned cars, from various mines from which it purchases part of the output. The assigned-car practice is not followed in securing coal in Canada. The carrier attempts to keep from 60 to 100 days' supply of coal on hand with a larger supply at the lake ports in order to provide for the entire winter. At the time of the last hearing it had from 90 to 100 days' supply at all points.

The Associated Industries of Massachusetts, with a membership of about 1,557 manufacturing industries, appeared in support of the assigned-car rule, and urged that it be left in effect to enable the New England carriers to secure a regular and dependable supply of coal.

On the further hearing, the assigned-car rule was opposed by the International Union, United Mine Workers of America, and by various coal operators' associations, including the National Coal Association, the Central Pennsylvania Coal Producers' Association, Southern Ohio Coal Exchange, Pocahontas Operators' Association, and the Illinois Coal Traffic Bureau. Generally speaking, the opponents of the rule contend that the evidence introduced on further hearing is merely cumulative and that no showing has been made which would warrant us in reversing our decision in the original case.

Evidence was introduced by some of the opponents of the assigned-car rule to show the discriminatory effect of this rule, the resulting diminution in the percentage allotment at nonassigned-car mines, and the practicability of securing railway fuel of proper quality at reasonable prices without assigning cars under the rule. The National Coal Association introduced in evidence, among other things, a table showing new equipment acquired, condition of old equipment, and railroad-fuel coal stored by railroads of this country, following an efficiency program which was adopted by railroad executives on April 5, 1923, to enable the carriers better to meet the transportation demands of the country. This table showed railway coal stored on November 1, 1921, to be 11,701,736 tons, on October 1, 1922, 5,423,195 tons, and on October 1, 1923, 17,663,448 tons. This association also introduced evidence showing tonnage of coal moved by representative non-coal-loading carriers, coal cars owned by each, and percentage of cars owned on line, by months, for the years 1920, 1921, and 1922, the percentage being substantially more than 100 per cent during the car-shortage periods of 1920 and the last half of 1922. The witness for the International Union, United Mine Workers, testified as to the irregularity in working time of miners in various sections of the country during the year 1921, and asserted that, although that was a year of full car supply, the irregu-

larity in working time resulted largely from overdevelopment of the mining industry caused by the assigned car in the past. In addition to testifying as to the adverse effect of the assigned-car rule upon labor, this witness also testified that the use of the assigned car enables the railroad to obtain cheaper fuel at the expense of the public, because with short-car supply at other mines the cost of production is increased, and this increased cost is passed on to the public.

Contention as to our authority.—Our authority over the distribution of cars of carriers subject to the act is to be found in sections 1, 3, and 15. Section 1 requires rules of car distribution to be reasonable, section 3 prohibits them from being unduly preferential or prejudicial, and sections 1 and 15 authorize us to prescribe just and reasonable rules. The provisions of these sections clearly indicate the broad scope of the authority which Congress has conferred upon us, and the important duties with which we are charged, to require, in time of car shortage, a just and equal distribution of cars and the prevention of a distribution which is unjust and discriminatory. *United States v. New River Co.*, 265 U. S. 533.

Respondents, however, contend that paragraph (12) of section 1 shows that we have no jurisdiction over the distribution of cars to carrier-owned or output-contract mines which furnish railway fuel exclusively for at least six months, because such mines are not "served" by a carrier and coal is not "transported" therefrom. The first sentence of this paragraph is relied upon to support this contention. This sentence reads:

It shall also be the duty of every carrier by railroad to make just and reasonable distribution of cars for *transportation* of coal among the coal mines *served* by it, whether located upon its line or lines or customarily dependent upon it for car supply.

The word "served" has no judicially determined or technical meaning which would make it inapplicable to carrier-owned or output-contract mines. We must, therefore, give this word its ordinary meaning. The Standard Dictionary defines it, among other things, to mean "to furnish or provide as with a regular supply at stated periods." "Self-service" is a common expression. To use this word, therefore, to mean the furnishing of cars by a carrier at its own mines or at those the output of which it takes, is to give the word its ordinary and well-accepted meaning. This is the meaning which we believe the Congress intended. As used in paragraph (12) "served" is a convenient term to show that the provisions of this paragraph apply not only to mines which are located on a carrier's own line, regardless of the ownership or contractual arrangements of

such mines, but also to mines which are located off its line and which it customarily supplies with cars.

Respondents also contend that the word "transportation" in paragraph (12) means common-carrier transportation, transportation for compensation, and not transportation of a carrier's own coal over its own line for its own consumption. They cite as authority *Int. Com. Comm. v. Balt. & Ohio R. R.*, 225 U. S. 326; *Santa Fe Ry. v. Grant Bros.*, 228 U. S. 177; and *The Pipe Line Cases*, 234 U. S. 548.

That "transportation" has not the restricted meaning claimed appears from the use of this word in the second sentence of paragraph (12), which reads:

* * * During any period when the supply of cars available for such service does not equal the requirements of such mines it shall be the duty of the carrier to maintain and apply just and reasonable ratings of such mines and to count each and every car furnished to or used by any such mine for transportation of coal against the mine. * * *

The counting requirements clearly apply to cars placed by a carrier for its coal at mines on the same date shipping commercial coal, yet this coal is transported by the carrier without compensation. The word "transportation," therefore, as used in paragraph (12) is not limited in its meaning to transportation for compensation, but includes also transportation of the carrier's own coal over its line.

In *Interstate Commerce Commission v. Ill. Cent. R. R.*, 215 U. S. 452, 472, the Supreme Court sustained the rule which we laid down in *Traer v. C. & A. R. R. Co.*, 13 I. C. C. 451, that cars for railway fuel should be counted at the mines at which they are placed. The contention¹ there, as stated by the Supreme Court, was:

When coal is received from the tippie of a coal mine into coal cars by a railway company, and the coal is intended for its own use and is transported by it, it is said there is no consignor, no consignee and no freight to be paid, and therefore, although there may be transportation, there is no shipment, and hence no commerce.

¹ The lower court sustained this contention and in doing so said in *C. & A. v. I. C. C.*, 173 Fed. 930, 932.

"Coal is brought by complainants from mines along their roads under contracts whereby the coal is delivered to them at the mine tipples. Some is there loaded directly into the tenders of the locomotives. The remainder is taken in cars to the railroads' coal chutes. All is for the complainants' own consumption.

"Commerce in these instances ends at the tipples. From there on, whether the coal goes directly or indirectly to the tenders, there is no consignor, no consignee, no shipper, no common carrier, no freight, no vehicle transporting a commodity in commerce. These cars are withdrawn from complainants' available commercial equipment, just as are flat cars while being used to distribute gravel for ballast. It is erroneous, therefore, to require complainants, in distributing their available commercial equipment among their shipping patrons, to take account of cars that are being used in hauling their own fuel."

93 I. C. C.

The Supreme Court in overruling this contention said, at page 474:

It may not be doubted that the equipment of a railroad company engaged in interstate commerce, included in which are its coal cars, are instruments of such commerce. From this it necessarily follows that such cars are embraced within the governmental power of regulation which extends, in time of car shortage, to compelling a just and equal distribution and the prevention of an unjust and discriminatory one.

Thus the court held that we had jurisdiction over cars used for hauling railway fuel over a carrier's own line, on the theory that such cars were instrumentalities of interstate commerce and could be regulated with a view to bringing about a just and equal distribution and preventing an unjust and discriminatory one. Whether the cars were used in common-carrier transportation was immaterial. The cases relied upon by respondents, namely, the *B. & O. case*, the *Grant Bros. case* and *The Pipe Line Cases*, *supra*, relate to what is common carriage and are, therefore, not in point. As to foreign-line fuel cars we call attention to the following in our original report, page 546:

When a railroad company becomes a purchaser of coal upon the lines of a connection, and ships it to itself as consignee, it is entitled to the same consideration as any commercial shipper or consignee and no more, and this is true when the shipment moves partly over the rails of the carrier that is in fact the shipper or consignee. *Rates on Railroad Fuel and Other Coal*, 36 I. C. C. 1, 9, *Divisions of Joint Rates on Railway Fuel Coal*, 37 I. C. C. 265.

See also *Interstate Commerce Commission v. B. & O. R. R. Co.*, 225 U. S. 326.

In view of the conclusion which we have reached as to the meaning of the words "served" and "transportation" in paragraph (12), we are of the opinion that its provisions apply to cars placed at carrier-owned and output-contract mines and can not be relied upon to show that the Congress exempted such cars from the other provisions of section 1 requiring reasonable rules of distribution, and the provisions of section 3 prohibiting unduly preferential or prejudicial rules. On oral argument counsel for respondents expressed the opinion that we could restrict the assigned-car practice to mines furnishing their output to a carrier for periods of at least six months. They thus apparently admit that mines selling their output to railroads for shorter periods are "served" and the coal hauled in the assigned cars is "transported" within the meaning of the act.

Respondents contend that an assigned-car mine furnishing all of its coal to a railroad for a long period of time is not in competition during such period with unassigned-car mines selling coal to others, and that in the absence of competition we have no authority to make a finding of undue prejudice or unjust discrimination under sec-

tion 3 of the act. The period which respondents assume, as we previously pointed out, is at least six months. If the period be less, apparently they recognize that competition may exist.

In the *Illinois Central case*, our authority under section 3 was in issue, and the court sustained our finding of unjust discrimination. Cars were required to be counted although the coal in them belonged to the carrier and was transported by it without compensation for its own use. While respondents attempt to distinguish that case on the ground that, as they contend, only partial-output mines furnishing railway fuel were there dealt with, the principle there established is broad enough to cover this case.

Assigned-car mines which furnish their output for long periods of time to railroads are, at the end of such periods, because of lower costs and better labor conditions which they have enjoyed, in a position to undersell competing unassigned-car mines. The record also shows that railroad-owned mines in many instances sell coal commercially. Such mines may not only at any time dispose of part or all of their product commercially, but may be leased or sold to outside interests, and thus actively engage in selling commercial coal. Moreover, while we do not consider this circumstance essential to our decision in this case, the record clearly shows that there is competition in labor between railroad-owned and output-contract mines on the one hand and commercial mines on the other. We think upon the facts shown of record that we have jurisdiction to deal with the distribution of cars to all of such mines under section 3 of the act. Competition is not an essential element under section 1. *Penn Tobacco Co. v. Old Dominion S. S. Co.*, 18 I. C. C. 197, 200.

Respondents contend that the evidence fails to show that the assigned-car rule is unreasonable under section 1 of the act; that a finding, if any, abolishing the assigned-car practice must rest on section 3; that the *Traer case* decision was made under that section; and that there has been no showing in this proceeding that justifies us in abolishing the rule laid down in that case.

In making this contention respondents, we believe, overlook the broad provisions of section 1 as to reasonable rules. Moreover, they fail to realize that to abolish the assigned-car rule is not to depart from the principle laid down in the *Traer case*, but to carry out that principle by preventing altogether the discriminatory practice which was there only partially restricted. We showed in our report, page 553, that "The circumstances surrounding and subsequent to our decisions in the *Traer case* and *Hocking Valley case* are such that the practice based upon the rules there announced can scarcely be

given the sanctity of long observance in considering the question of reasonableness or undue preference."

Effect of assigned-car rule.—In passing upon the rule before us, it is important to bear in mind the fundamental purpose of the act "to compel the carrier as a public agent to give equal terms to all," "to cut up by the roots every form of discrimination, favoritism, and inequality," and to "place all shippers upon equal terms." *New Haven R. R. v. Interstate Com. Com.*, 200 U. S. 361; *Louisville & Nashville R. R. v. Mottley*, 219 U. S. 467; *United States v. Union Stock Yard*, 226 U. S. 286. We have already noted the Supreme Court's language in the *Illinois Central* case as to our power to require "a just and equal distribution and the prevention of an unjust and discriminatory one." The court also refers in that case to the carrier's "duty to make equal distribution of cars," page 477, and "the duty of equality of treatment," page 473. In *Rail & River Coal Co. v. B. & O. R. R. Co.*, 14 I. C. C. 86, 88, which related to assigned foreign railway fuel cars and private cars, we said:

There is no more insidious or effective way by which a carrier may discriminate between its shippers than through a regulation or practice that denies to them the equal enjoyment of its facilities. And if the rules of carriers with respect to car distribution are not included within the scope of the law, the prosperity of shippers, during periods of car shortage, largely lies in the hands of the carriers on whose lines they conduct their business enterprises, whenever such carriers are disposed to and do actually favor some shippers at the expense of others. * * * The underlying purpose of this legislation, as will doubtless be agreed, was to put shippers on a basis of absolute equality; to assure to them not only equal rates but an impartial enjoyment of the facilities and services of interstate carriers.

One effect of the assigned-car rule, as we pointed out in our original report, pages 542 to 546, is to diminish the supply of cars at commercial mines. The extent of the diminution in car supply, as we also pointed out, is in dispute and is difficult to state in mathematical terms. Counsel representing the American Railway Association contend that, while on the whole it seems difficult, if not impossible, to name an exact figure which will represent the percentage of increase in the supply of cars to commercial mines which would be brought about by the abolition of the assigned-car privilege, 3 per cent would be more nearly a correct figure than any other which could be named. Opponents of the assigned-car rule on further hearing introduced further evidence on this phase of the case. This showed, among other things, that, if there had been a pro rata distribution of all cars in the eastern and central regions of the Pennsylvania, which include that portion of the railroad from Crestline, Ohio, east to New York, the supply of commercial mines

for the eight months ended April 30, 1923, would have been increased from 34.23 per cent to 54.02 per cent of the commercial cars ordered, or an increase of 57.81 per cent over the supply received by commercial mines during that period. From September 1 to March 1 during this period, the total number of cars available, assigned and unassigned, decreased from 165,016 the first month to 94,280 the last month, and the percentage of assigned cars available to all cars available increased from 25 to 65 per cent. The orders for commercial cars remained almost constant. The following table shows the situation as to car supply on the Cresson and South Fork divisions of this railroad from October 19, 1922, to April 30, 1923:

	Total required	Cars available		Percent- age of cars avail- able to cars re- quired
		Assigned	Unassigned	
Cresson division:	<i>Cars</i>	<i>Cars</i>	<i>Cars</i>	<i>Per cent</i>
Railroad-fuel cars.....	10, 141. 2	8, 930. 0	295. 4	91
Private cars.....	21, 257. 8	24, 447. 9	1, 092. 8	126. 1
Commercial cars.....	141, 780. 4	13, 602. 8	38, 589. 2	29. 8
Total.....	173, 179. 4	36, 980. 7	39, 977. 4	44. 4
South Fork division:				
Railroad-fuel cars.....	15, 119. 1	11, 955. 5	510. 2	82. 5
Private cars.....	30, 297. 6	36, 023. 0	242. 4	119. 7
Commercial cars.....	87, 117. 9	13, 286. 9	23, 778. 7	31. 1
Total.....	132, 534. 6	51, 265. 4	24, 531. 3	57. 2

¹ Includes cars not assigned for railroad fuel but for other reasons not counted against the distributive share of the mines.

It will be observed that if there had been a pro rata distribution of all cars, assigned and unassigned, the commercial supply on the Cresson division would have been increased from 29.8 per cent to 44.4 per cent, or an increase of 49 per cent, and on the South Fork district from 31.1 per cent to 57.2 per cent, or an increase of 83.9 per cent.

The supply of assigned and unassigned cars in the various districts of the Chesapeake & Ohio during the first three months of 1923 is shown in the following table:

District	Unassigned cars			Assigned cars		
	Ordered	Furnished	Percent- age	Ordered	Furnished	Percent- age
New River.....	94, 366. 9	27, 471. 8	29. 1	5, 989. 5	5, 494. 7	91. 7
Kanawha.....	67, 619. 4	20, 282. 3	30. 0	3, 394. 6	3, 068. 6	90. 4
Coal River.....	37, 840. 1	11, 041. 7	29. 2	2, 911. 6	2, 212. 6	76. 0
Logan.....	117, 965. 2	37, 823. 1	32. 1	16, 345. 5	14, 546. 0	89. 0
Kentucky.....	47, 381. 6	14, 067. 1	29. 7	6, 603. 0	5, 596. 5	84. 8
Total.....	365, 173. 2	110, 686. 0	30. 3	35, 244. 2	30, 918. 4	87. 7

District	Total			Percent- age increase ¹
	Ordered	Furnished	Percent- age	
New River.....	100,356.4	32,966.5	32.8	12.7
Kanawha.....	71,014.0	23,350.9	32.8	9.7
Coal River.....	40,751.7	13,254.3	32.5	11.3
Logan.....	134,310.7	52,369.1	39.0	21.5
Kentucky.....	53,984.6	19,663.6	36.4	22.6
Total.....	400,417.4	141,604.4	35.4	16.8

¹ Last column shows percentage increase in commercial supply if all cars are distributed pro rata.

The evidence does not show the various classes of assigned cars, except that as to the Logan district it shows the 16,345.5 assigned cars ordered included 9,954.4 cars for Chesapeake & Ohio fuel coal and the 14,546 assigned cars furnished included 9,286.4 cars for Chesapeake & Ohio fuel coal.

The supply of cars, assigned and unassigned, in the Corning, Drakes, Fultonham, and Kanawha & Michigan districts on the Ohio Central lines of the New York Central Railroad for the first three months of 1923, is shown as follows:

District	Unassigned cars			Assigned cars		
	Ordered	Furnished	Percent- age	Ordered	Furnished	Percent- age
Kanawha & Michigan.....	65,635	17,019	25.9	6,029	3,436	57
Drakes.....	10,513	2,775	26.4	257	140	54.5
Corning.....	28,172	8,479	30.1	10,620	7,709	72.6
Fultonham.....	5,715	1,660	29.1	4,633	3,907	84.4
Total.....	110,035	29,933	27.2	21,542	15,192	70.5

District	Total			Percent- age increase ¹
	Ordered	Furnished	Percent- age	
Kanawha & Michigan.....	71,664	20,455	28.5	10
Drakes.....	10,770	2,915	27.1	3
Corning.....	38,792	16,188	41.7	38.5
Fultonham.....	10,348	5,567	53.8	85
Total.....	131,577	45,125	34.3	26

¹ The figures in the last column show the percentage increase in car supply which commercial mines would have received if there had been a pro rata distribution of all cars.

After weighing the evidence in the light of the various contentions made on this phase of the case, we think our former conclusion that the supply of cars at commercial mines would be increased by abolishing the assigned-car rule is fully warranted. This effect not only clearly appears from the evidence, but also the gross inequality of treatment as between assigned-car mines on the one hand and un-

assigned-car mines on the other. As we pointed out in our original report, page 550, the result of inequality in the running time as between mines receiving assigned cars and those purely commercial is that the cost of operation of the latter must be higher for each unit of production, and the amount of such increased cost is considerable and important. We think it unnecessary to add to what we said in our original report, page 550, as to the effect of the assigned-car practice, in attracting as many desirable miners as can be given employment to the assigned-car mine and away from commercial mines, and in bringing about a more rapid labor turnover at the latter than at the former.

In our original report, page 547, we pointed out that the record indicated that upon the whole the wastage during periods of car shortage, which results from the holding over from one day to the next of cars set for loading, is somewhat greater at mines which use the railroad or private assigned car than at commercial mines. We see nothing in the evidence on further hearing to change our finding on this point.

Contentions as to necessity of assigned fuel cars.—Respondents contend that the assigned-car rule as advocated by them is reasonable and not unjustly discriminatory because under it they are able to secure a regular supply of coal of proper quality at reasonable prices during car-shortage periods while without it they would not be able to do so. Before reviewing the large volume of evidence on this feature of the case it is important to bear in mind that the fundamental purpose of the act is equality of treatment in rates and service, and this principle may not be violated merely because the carrier in that way may operate at less expense. If this were not true a carrier in times of car shortage could restrict its car supply to a few large and well-operated mines on its line and ignore the remainder. In *United States v. Ill. Cent. R. R. Co.*, 263 U. S. 515, the court said, page 523:

The effort of a carrier to obtain more business, and to retain that which it had secured, proceeds from the motive of self-interest which is recognized as legitimate; and the fact that preferential rates were given only for this purpose relieves the carrier from any charge of favoritism or malice. But preferences may inflict undue prejudice though the carrier's motives in granting them are honest. *Interstate Commerce Commission v. Chicago Great Western Ry.*, 209 U. S. 108, 122. Self-interest of the carrier may not override the requirement of equality in rates. * * *

That was a rate case, but the principle is applicable in a car-distribution case, that a carrier's self-interest may not override the requirement of equality in car distribution. See also *Int. Com. Comm. v. Balt. & Ohio. R. R.*, 225 U. S. 326.

Much of the argument as to economy of operation resolves itself into the proposition that a carrier is able to secure cheaper coal as

the result of discriminating in its own favor through the use of the assigned car. As to this it is appropriate to repeat what we said in our report of January 25, 1907, to Congress on "Discriminations and Monopolies in Coal and Oil":

* * * The prevailing rule is that cars in which fuel coal was loaded were not counted against the percentage of cars allotted to the operator furnishing such coal, but that fuel coal cars were arbitrarily allotted to the operators furnishing such coal over and above their percentage allotment.

The reason advanced by the officers of the railroad for this was that it enabled them to get cheaper fuel, in that an operator loading fuel coal would get the cars necessary to carry the same over and above the percentage he was entitled to under the system of car distribution in effect, and that he would therefore be willing to make a low price on fuel coal in order to keep his colliery running regularly. The result of this was practically a payment by the operator to the railroad company for cars by way of reducing the price of fuel cars, and while the profit of the operator on fuel coal may not be large, it enabled him to keep his miners regularly employed and his plant in operation and gave him an advantage over a competitor who has no order for fuel coal.

While, as we pointed out in our original report, there was lack of evidence to show that railroads had used the assigned-car rule to coerce mine operators into selling their coal at unreasonably low prices, the evidence introduced at the original hearing and upon the further hearing shows that the carriers are able in consideration of furnishing a full supply of cars under this rule to make contracts for coal at somewhat lower prices than they could otherwise make.

Respondents contend that the table in our report of 52 carriers not using assigned cars does not, when considered in view of the evidence which they presented, justify the inference that carriers can secure their coal at reasonable prices during periods of car shortage without the use of the assigned car. However, as to the eight carriers, whose practices were shown on the further hearing, the evidence shows certain significant facts. The Great Northern and Chicago & North Western did not resort to the assigned-car practice in securing their fuel. The St. Louis-San Francisco in securing approximately 73 per cent of its coal from mines on its own line did not follow this practice, and followed it only to a limited extent, if at all, in securing the remainder of its coal from mines on other lines. The Atchison, Topeka & Santa Fe secured over one-third of its supply of coal without the use of assigned cars. The Carolina, Clinchfield & Ohio did not follow this practice in 1920 or in October, 1922, although it did do so the latter part of that year. During 1920 and until the latter part of 1922 the Seaboard Air Line obtained practically all of its coal without assigned cars. The Delaware, Lackawanna & Western obtained 40 per cent of its coal in this manner. Our table shows that the Atlantic Coast Line and

the Detroit & Mackinac did not follow the assigned-car practice in 1920 and were not following the practice on October 1, 1922, and that the Richmond, Fredericksburg & Potomac, while following the practice in 1920, was not using assigned cars on October 1, 1922. This showing remains uncontradicted, except that in the latter part of 1922 the first two carriers secured coal on the Chesapeake & Ohio in cars placed under the assigned-car rule, while the third carrier continued to secure its coal on that road without assigned cars. As to the remainder of the 52 carriers listed in our table as not using assigned cars, the showing made therein is neither contradicted nor modified. Among these are certain important roads like the Union Pacific, the Buffalo, Rochester & Pittsburgh, and the Mobile & Ohio.

The evidence on further hearing as to carriers other than those shown in our table furnishes in many instances added support for the conclusion that carriers in car-shortage periods may secure their coal at reasonable prices without the use of the assigned car. As illustrative of this, the Chicago, Burlington & Quincy, between the time of the original hearing and the further hearing in this case, secured over half of its coal without the use of assigned cars, during a period of sustained car shortage. This was true also in previous car-shortage periods, as shown at the original hearing. The New York Central secured about 26 per cent of the coal it consumed without the use of the assigned car. The Pittsburgh & Lake Erie, a part of this system and an important coal-loading carrier, did not follow the assigned-car practice in securing its fuel in the year 1920. The Michigan Central, also a part of the system, secured, since the period of Federal control, a substantial portion of its fuel in Michigan without the use of assigned cars, and from 1912 to 1917 procured all of its coal without assigned cars.

Many large and important carriers in representative sections of the country have secured their coal during periods of car shortage without resorting to the use of assigned cars, and many others have secured large portions of their fuel supply in the same manner. The evidence in the original record and upon the further hearing also shows that public utilities and quasi-public utilities have been able to secure their coal without the use of the assigned cars. We pointed this out in our report, pages 552 and 553.

There is a large volume of evidence in the original record and in the record upon the further hearing as to the methods which carriers adopted, and which they could adopt in securing their fuel without the assigned-car rule. These include greater storage of coal during periods of inactive demand and a wider distribution of fuel contracts among producing mines, with a provision in some cases that railroad coal shall be delivered in preference to coal for other customers.

While the carriers contend that these methods are impracticable as substitutes for the assigned-car rule, the experience of carriers and other public utilities and quasi-public utilities, which do not depend upon this rule in securing all or a large part of their fuel, and the other evidence in the record on this subject, convince us of the practicability of securing railway fuel at reasonable prices in the absence of the assigned-car rule.

As stated in our original opinion, however, emergencies may arise when for a time a carrier may be unable to secure its coal. But we are not here dealing with the question of car distribution under the emergency provisions of section 1, paragraph (15). In our original report we expressly pointed out that the rule which we prescribed was not to preclude us from authorizing necessary assignment of cars in case of emergency. The question of a just and nondiscriminatory rule under the provisions of section 1 and section 3, with which we are now dealing, is a different question from that of a rule to be prescribed in case of emergency. The distinction is recognized in paragraph (15), where it is provided that we may suspend car-service rules at such times.

In the petition for rehearing filed by the American Railway Association it was alleged that the abolition of the assigned-car rule would add more than \$100,000,000 a year to the operating expenses of the carriers, which must ultimately be met by the public. No figures were offered to show how this sum was computed, and there was a general failure of evidence to support this contention. As we have previously indicated, carriers which have not used the assigned-car rule in securing all of their coal, or a large part thereof, have been able to do so at fair prices. Moreover, as the result of inequality in working time caused by the assigned-car rule the costs of commercial mines are increased and the public in consequence must pay higher prices for coal. We referred to this in our original report, pages 550 and 551. It seems probable that, as one of the consequences of abolishing the rule, carriers will increase the storage of coal during periods of free car supply and thus not only secure coal at low prices but make more equipment available for revenue service during periods of car shortage. The evidence shows that many carriers, as well as public utilities and important industries, store large quantities of coal and are able to do so at reasonable expense. Storage by railroads and others in periods of car surplus tends to equalize the demands by operators on railway equipment throughout the year, and to prevent periods of extreme car shortage during which, because of the great demand for coal, inefficient high-cost mines spring into operation, and the public is required to pay excessive prices for coal.

It has been suggested in this proceeding that elimination of the assigned-car rule would be an unwarranted interference by us with the carriers' right to purchase coal where and from whom they please. A similar contention was overruled in the *Illinois Central case*, 215 U. S. 452, 477, in which the court said:

The right to buy is one thing and the power to use the equipment of the road for the purpose of moving the articles purchased in such a way as to discriminate or give preference are wholly distinct and different things.

Special types of equipment.—On further hearing, the contention is made that the side-dump cars of the Hocking Valley and the ballast and stock cars of the Atchison, Topeka & Santa Fe are special types of equipment which are used exclusively by these carriers in hauling their coal and can not be used by commercial operators at all, and that we are without authority to deal with such cars for the reason that—

Cars of this type have never been impressed with the character of common-carrier instrumentalities. They are not used in commerce at all; they are used only in performing the private work of a railroad company.

The Hocking Valley cars were in commercial service for many years before they were put in fuel-coal service, and they are placed at partial-output mines selling commercial coal and are counted and distributed on a pro rata basis. The Atchison, Topeka & Santa Fe cars are placed at mines of this description and are counted under the assigned-car rule, and such cars may be unloaded by dumping like ordinary coal cars. The side-dump cars and the stock and ballast cars constitute part of the available equipment of these carriers for commercial shipments, and come within the class of equipment as to which Congress requires "a just and equal distribution and the prevention of an unjust and discriminatory one." *Illinois Central case*, 215 U. S. 452, 474.

It is contended that if the assigned-car rule should be abolished carriers will be deprived of the advantage of using a particular type of cars especially adapted for unloading at coaling stations. Our order, however, does not prohibit such use, but merely placement in excess of the mine's distributive share. The Hocking Valley, as we have just pointed out, now uses its side-dump cars in securing coal from partial-output mines on a pro rata basis of distribution.

Railroad-owned mines.—In what we have said we have dealt with railroad-owned mines as well as other mines. We shall here refer briefly to railroad-owned mines alone.

A statement filed by respondents shows 23 railroads owning mines. The ownership in nearly all cases is through subsidiary companies.

Eleven² of the 23 had mines producing commercial coal as well as fuel coal. Four, the Chicago Great Western, the Chicago, Rock Island & Pacific, the Richmond, Fredericksburg & Potomac, and the Delaware, Lackawanna & Western had mines located on other railroads. Five, the Chicago & North Western, the Great Northern, the Minneapolis & St. Louis, the Richmond, Fredericksburg & Potomac, and the Union Pacific are carriers which do not resort to the assigned-car practice. The Canadian National should be added to the four having mines on other lines.

Certain of the carriers owning mines emphasize the importance of having these mines from the standpoint of economy and efficiency. The Chicago, Burlington & Quincy closes down its mine during periods of car surplus, and distributes its purchases among commercial mines to help such mines and thus produce more revenue freight. Moreover, the evidence indicates that in some instances at least, coal can be secured more cheaply from commercial mines than company-owned mines because of the greater distance necessary to haul the coal in the latter case. The Atchison, Topeka & Santa Fe does not consume the output of one of the mines which it owns, because to consume it all would require hauling the coal unreasonable distances. The Chesapeake & Ohio mines are on a branch line. If all the coal this company consumes should be taken from these mines, it would have to be hauled into and through other coal-loading districts on the same railroad.

PRIVATE ASSIGNED CARS

Much of what we have said concerning assigned cars for railway fuel is applicable to private cars.

Nearly all of the private-car owners who filed petitions for rehearing appeared in the original proceeding or had subsidiary or affiliated companies which did. They stated that the evidence which was introduced there did not fully disclose the necessity for the private assigned car in the various classes of industries relying upon it and contended that they should therefore be permitted to make a complete showing on this subject.

On the further hearing much evidence was introduced by such owners as to their individual situations and the economic necessity in each case of the assigned private car. The widest scope was allowed in the production of testimony as to these individual situations

²Atchison, Topeka & Santa Fe, Baltimore & Ohio, Central of Georgia, Chicago, Rock Island & Pacific, Erie, Great Northern, Minneapolis & St. Louis, Missouri Pacific, Northern Pacific, Southern Pacific, and Union Pacific.

and needs. The names of the companies introducing evidence and the number of cars owned are as follows:

Bethlehem Steel Corporation	3, 975	Seaboard By-Product Coke Company	350
Steel Company of Canada and affiliated companies	400	Chicago By-Product Coke Company	650
Carnegie Steel Company and other subsidiaries of United States Steel Corporation	5, 200	Rainey-Wood Coke Company	400
Pittsburgh Plate Glass Company	269	Donner Union Coke Corporation	500
Ford Motor Company and subsidiary company	800	Berwind-White Coal Mining Company and subsidiary company	4, 078
Youngstown Sheet & Tube Company	1, 334	Westmoreland Coal Company	2, 019
International Harvester Company and subsidiary	500	Public Service Electric Company	600

These companies owned about 21,000 of the total 29,296 coal and coke cars privately owned as of October 1, 1923.

In addition to the evidence offered by private-car owners, certain public utilities of the city of New York, which received large quantities of coal in private cars owned by others, introduced evidence to show the necessity of the private assigned car. With the exception of the National Coal Association, the same associations which opposed the railway-fuel car opposed the private assigned car and in addition to these there were, among others, the Harlan Coal Operators' Association and the New River Coal Operators' Association.

Contention as to our authority.—Some of the private-car owners content that the interstate commerce act recognizes private cars as legitimate, that the right of the owners to use such cars includes the right to have them placed at designated mines without restriction unless such use of cars result in preferential use of other equipment such as locomotives or tracks, and that we have no authority to abolish the assigned-car rule and require pro rata distribution, because, as they contend, the facts do not warrant us in finding that the use of such cars will result in preferential use of facilities other than cars.

In our original report, pages 554 to 559, we referred to various decisions in respect to private cars, and said:

Throughout our reports we have held to the central idea that the carrier, in permitting the use of the private car, must at its peril see that the use of the vehicle does not permit, excuse, or justify a discrimination, preference, or advantage in favor of the owner of the private car, regardless of the present ability of the carrier to furnish on demand an adequate supply of equipment needed for transportation. Throughout we have recognized that when the carrier permits the use of the private car upon its rails, it is responsible for the manner in which the service is conducted in that car, and that the car becomes in all respects as if it were one of the general stock of those owned by the carrier, and subject to the same liabilities and responsibilities as to the use in interstate transportation.

A statement of the general principles which should be applied is also to be found in *United States v. Baltimore & Ohio Railroad Co.*, 165 Fed. 113.³ In that case the Circuit Court of Appeals for the Fourth Circuit in dealing with the distribution of privately owned cars to coal mines called attention to the provisions of section 1 requiring carriers to furnish transportation upon reasonable request and to the definition of "transportation" in section 1 as including cars and other vehicles "irrespective of ownership or of any contract express or implied for the use thereof," and then proceeded as follows, pages 122 and 123:

In passing upon the questions involved, it should be borne in mind that the statute casts upon the carrier the plain duty of furnishing a fair and equal distribution of facilities to the shipper. The duty thus enjoined cannot be evaded by the carrier by claiming that it is not the owner of the portion of the cars carried over its lines. The duty of furnishing equal facilities relates to and involves purely the question of transportation, and when we are called upon to determine as to whether in any particular instance there has been an undue and unreasonable discrimination or preference as contemplated by the statute, the sole question is as to whether the entire equipment operated over the lines of the carrier has been fairly and equally distributed among all the shippers along its lines who are similarly situated. The defendant mine owners insist that in the purchase of individual cars they have expended a considerable sum of money, which thereby becomes a part of their investment and should be treated as such, and that it would be unfair to them to require the carrier to charge such cars as a part of the percentage to which they are entitled. This is a matter which we cannot consider, inasmuch as the statute was not enacted for the purpose of promoting the interests of any particular mine owner; it being limited to one purpose, to wit, the fair and equal distribution of car service by railroads or transportation companies among all mine owners similarly situated within the territory in which their lines are operated.

It is made the duty of the carrier to move the product of the shipper, and in doing so, if the carrier should by any means deny to a particular shipper his just and proportionate share of facilities as compared with other shippers similarly situated, then, in that event, the shipper would undoubtedly be entitled to the relief accorded by section 23 of the act. If, as in this instance, a carrier, by contractual arrangement, operates individual cars belonging to mine owners as a part of its equipment, such arrangement cannot in the slightest degree relieve the carrier of the duty to furnish equal facilities to all shippers similarly situated. To adopt any other rule would be to make it possible for wealthy mine owners, by the purchase of car equipment, to utilize the means of transportation operated by the carrier to such an extent as to practically deprive other mine owners similarly situated of any means of transportation, and it was to avoid this very kind of discrimination that the provisions of sections 1 and 3 of the interstate commerce act were enacted. There is nothing in the interstate commerce act which prohibits a carrier from making any arrangement it may choose as respects the ownership of cars which it operates on its lines. That is a matter which it left entirely with the car-

³ The case was later reversed by the Supreme Court in *Baltimore & Ohio R. Co. v. Pitcairn Coal Co.*, 215 U. S. 481, but on the ground alone that the lower court had no jurisdiction to pass upon the reasonableness of car-distribution rules, since the question was an administrative one for the commission.

rier; but, while such is the case, it is equally true that the carrier cannot, by any such arrangement, by indirection, accomplish that which is prohibited by the statute.

The private-car owners concede that the assigned-car rule established by the *Hocking Valley* case and *Traer* case is reasonable and lawful. In one of the briefs in behalf of many of such owners, it is stated that this rule "has the approval of the Supreme Court of the United States. *Int. Com. Comm. v. I. C. R. R. Co.*, 215 U. S. 452." While the court in that case did not expressly pass upon the rule in so far as private cars were concerned, it may be considered as authority for the proposition that we have power to make such a rule. The lower court in *Chicago & Alton R. Co. v. Int. Com. Comm.* 173 Fed. 930, in sustaining the rule as to private cars said, page 932:

A charter duty of railroads is to provide cars, as well as tracks and locomotives. So far as the shipping public is concerned, it is a matter of indifference whether railroads discharge this duty by purchasing or by renting or by borrowing cars. But since no vehicle for transporting commodities in commerce can have any rights upon the tracks of a public carrier except under and by virtue of the carrier's charter, a shipper who is not also a lessor or lender of cars is interested in seeing that the carrier abstains from discriminations in conditions of service on account of the ultimate ownership of any of the instrumentalities used by it in the transportation of commodities in commerce. A shipper who owns cars is not entitled on that account, or on any account, to a preference in rates or in promptness of service. If his cars are used, all that he is entitled to is to be paid the just value of the use, whether measured by mileage or otherwise. If he has a contract with the carrier that calls for more, that contract is pro tanto void. In our judgment, therefore, the so-called private cars, if accepted by an interstate carrier for use by it in transporting a commodity in commerce, must be treated as constituting a part of the carrier's available commercial equipment.

The fundamental principle which has governed us in dealing with private cars is that such cars, being paid for by the carriers through allowances to their owners, are to be treated as part of the carrier's equipment, and may not be so used as to bring about unjust discrimination or unreasonable practices. Prior to the *Hocking Valley* and *Traer* decisions private cars were not taken into account at the mines to which they were assigned. Such mines received in addition their full pro rata share of system cars in the same manner and to the same extent as if the private cars were nonexistent. By these decisions, however, private-car owners who did not have sufficient private cars for placement at their mines to exceed the distributive share of such mines were deprived of the advantage of ownership of the cars just as private-car owners claim here that they would be deprived of the advantage from the ownership of their cars if the assigned-car rule should be abolished and the placement in excess of the distributive share of the mines be prohibited. The interstate

commerce act not only confers authority upon us to restrict the preferential use of private cars as was done in those decisions, but authorizes us to prohibit altogether such preferential use. *United States v. New River Co.*, *supra*, and cases therein cited. As we pointed out in our original report, page 561:

A private-car owner is either entitled to the preference to the full extent of the carrier's willingness to accept his cars, or is entitled to no preference whatsoever on account of that ownership, and a compromise is untenable.

The contention is made that paragraph (12) of section 1, which was incorporated into the interstate commerce act by transportation act, 1920, limits our power to change or extend by further limitation the rule laid down in the *Traer case* and *Hocking Valley case*. That this was not the intent of Congress, we think, is clear. In this connection, it is to be observed that the Supreme Court in *United States v. Pennsylvania R. R. Co.*, 266 U. S. 191, decided November 17, 1924, used the following language:

* * * There is nothing in the Act to Regulate Commerce as originally enacted, or in Transportation Act, 1920, or in any earlier amendment, which indicates a purpose on the part of Congress either to allow a carrier to create undue prejudice by the use of facilities possessed, or to narrow the Commission's powers to prevent unjust discrimination. * * *

Private cars which are paid for by carriers for use and are used on their lines are clearly "facilities possessed," and come within the broad powers conferred upon us by the statute to prevent unjust discrimination.

As to the contention of private-car owners that they are entitled to unrestricted use of their cars unless this involves some preferential use of facilities other than cars, we may repeat here what we said in *Rail & River Coal Co. v. B. & O. R. R. Co.*, 14 I. C. C. 86, at page 92:

The mere ownership of a private car gives to the owner no superior right to use the facilities of the carrier in transporting it; it gives to him no right to have his private car attached to a locomotive in preference to a system car loaded by another shipper. The ownership of a private coal car or the possession of a foreign railway fuel car can give to an operator no preferred right to have it occupy a carrier's sidings or other tracks as against a system car loaded by another coal operator, or to have it handled by a train crew in preference to a system car. When any of these general facilities are insufficient to move all the traffic offered, no operator has a superior right over another merely because he enjoys the advantage of owning private cars or has fuel contracts with connecting lines. And this shortage in other facilities which, as heretofore stated, rarely, if ever, fails to accompany a shortage in cars, has an important bearing upon the matter of the distribution of cars, and underlies what the Commission has said on those questions in its formal decisions.

In the report of the American Railway Association conference committee to the United States Coal Commission, dated June 1, 1923, which is in the record, the following appears:

"Coal Car Shortage," while a term generally used, is commonly a misnomer; "Transportation Shortage" would be more exact or more properly descriptive. From the viewpoint of the mine management a "car shortage" exists when cars are not placed on mine tracks in sufficient quantity to fill car orders. From the viewpoint of the railroad management the situation may rather be considered a "Transportation Shortage," for at such a time there may exist no "car shortage" on the railroad as a whole. That is, even though all car orders are not filled there may be in the road's possession as many coal cars in the aggregate as in previous periods when the mines it served loaded a greater amount of coal and the needs of such mines for cars were more adequately or fully met.

When labor disturbances cause abnormal demands for coal to be delivered in certain sections of the country within a certain period, the coal moves to meet these demands via routes and gateways in quantities far above the normal, or average, movement through such channels and also via unusual routes. Because of this abnormal coal movement, yard tracks, main tracks, terminals, lake and tidewater piers and various other facilities become overtaxed or congested, with a consequent slower movement and longer turnaround of cars. This results in what the mine management terms a "car shortage."

As we pointed out in the *Rail & River case*, "A shortage in cars usually if not invariably is accompanied by a shortage in some one or more of the other facilities of the carrier." Locomotives, tracks, employees, terminal facilities, etc., are so related to the number of cars in service that an excessive demand for cars places an excessive burden upon such other facilities. Some of the more aggravated cases of discrimination shown under the assigned-car rule were during car shortages resulting in part at least from lack of motive power and limited track facilities. Some of these cases were cited by private-car owners as examples of the necessity of the assigned car. As illustrative of this, the United States Steel Corporation, International Harvester Company, Chicago By-Product Company, and Ford Motor Company, through subsidiary companies, operate large mines in the Harlan district of the Louisville & Nashville in Kentucky, and severally own about 4,000 private cars used in serving their respective mines. The evidence shows that this carrier was unable, because of limited track facilities among other things, to handle all the cars required by the mines in this district, and yet private-car mines received practically full car supply while other mines in the district received less than a 30 per cent supply for substantial periods. Other divisions of the same railroad not only had a larger percentage of cars than the Harlan

district, but at times during the car shortage it was shown that this carrier notified connections not to deliver empty cars to it.

In determining upon a just and workable rule, we must recognize the fact that car shortages result from a general shortage in facilities, including terminals, motive power, etc., and that to permit private-car owners to have their cars placed at designated mines in excess of the pro rata allotment means that private-car owners will receive more than their fair share of those transportation facilities which they do not own, while to require pro rata distribution of cars is to bring about a just and nonpreferential distribution in conformity with the fundamental requirements of the act.

Contention as to necessity of private assigned cars.—As we have indicated, much evidence was introduced by private-car owners to establish the necessity of the use of private cars under the assigned-car rule. Much emphasis was laid upon the technical processes involved in the making of by-product coke and the necessity of having a regular supply of coal of proper quality for coking purposes. The principal witness on this subject was the president of the Seaboard By-Product Coke Company and the Chicago By-Product Coke Company. The situation as to the former is typical and will be briefly summarized:

The Seaboard By-Product Coke Company operates 165 by-product coke ovens at its plant in Kearney, N. J., in which it uses about a million tons of coal a year in producing about 750,000 tons of coke. In this process gas and other by-products of the coal are recovered. The gas is supplied to a public-service gas company. Of the coke 60 per cent is sold to public utilities for the manufacture of water gas and the remainder is sold to industrial and domestic customers. The by-product company is under contract to furnish daily a fixed amount of gas to the gas company, which under its franchise must supply gas to the public. Continuous operation of the by-product plant is necessary in order to supply the gas contracted for and to furnish a regular supply of coke to gas companies for the manufacture of water gas. By-product ovens are lined with specially molded silica brick, and require a gradual heating of from six to eight weeks to put them in blast. Rapid heating will expand the oven walls, destroy them, and require rebuilding at substantially replacement cost and with long delay. Sudden shutdowns will likewise wreck the ovens. The witness estimated the cost of replacement to be from \$300,000 to \$500,000, depending upon the size of the plant. It is important to have a continuous supply of uniform grades of freshly mined coal from selected mines in order to comply with specifications as to gas and to produce coke suitable for water-gas manufacture and for the metallurgical and domestic

trade. Unknown and varying coals will cause serious injury to the ovens by reason of expansion or crumbling during the coking process. Determination of correct mixtures of coal is a delicate operation, requiring much time and many tests in test batteries of ovens. The company ordinarily keeps in storage about two months supply of coal to guard against a breakdown in transportation or trouble at the mines. Such coal must be mixed with freshly mined coal to produce satisfactory results.

In 1919 and 1920 the Seaboard By-Product Company was unable, because of car shortages then existing, to secure suitable coal under contracts which it had. Additional coal was purchased to keep its plant in operation, but this was of poor quality and resulted in bad coke. In 1920 the company acquired 350 cars, and has been able to have these cars assigned and has thus secured suitable coal and operated its plant satisfactorily during car-shortage periods.

In the last 10 years over \$200,000,000 has been invested in by-product coke plants and their accessories, and a tremendous saving in natural resources has resulted from the use of this process. The by-products thus saved are estimated to be worth about \$4 for each ton of coal coked.

The steel companies also emphasized the necessity of private assigned cars in securing coal of proper quality for the by-product coke plants which they operate in connection with the manufacture of steel. Large quantities of gas are supplied by such companies to public utilities. It is important in producing steel to have coke made from coal of proper physical structure and metallurgical content. Sulphur and phosphorus in the coal used for coking will continue throughout the process and impair the quality of the finished steel. Many of these companies own outright or through their subsidiary companies mines selected because of the suitability of the coal produced for steel making and use their private cars for transportation of the coal from their mines to their own plants. Some of such mines ship only to the industries which own them. When coal can be obtained and stored the steel companies generally carry a sufficient supply in stock to take care of their requirements during any ordinary period of irregular coal supply or interrupted transportation service.

The Berwind-White Coal Mining Company and its subsidiary, the New River & Pocohontas Consolidated Coal Company, own 4,078 private cars which are used in transporting coal from mines which the former company owns on the Pennsylvania and from mines which the latter company owns on the Chesapeake & Ohio. The subsidiary company also owns mines located on the Norfolk

& Western. These companies supply large quantities of coal to railroads and public utilities and to steamship companies for bunker coal. They have owned the cars for many years, and contend that such cars under the assigned-car rule are a necessity in order to insure regular delivery to their customers.

Evidence of similar character was introduced by other private-car owners. While all of them contend that private assigned cars are necessary in their industries and in some cases allege that disaster will result if they are deprived of the assigned-car privilege, the record shows that many of such owners secure large quantities of coal without the assigned car. As illustrative of this, the Carnegie Steel Corporation and other subsidiaries of the United States Steel Corporation normally receive by rail 20,000,000 tons of coal annually, one-half of which is used in their mills for producing gas and steam and one-half in their by-product coke ovens. These companies own 5,200 coal cars. Of the 20,000,000 tons 5,000,000 are moved in these cars. About 12.5 per cent of the 10,000,000 tons of coal for gas and steam and about 37.5 per cent of the 10,000,000 tons used for by-product coke are moved in this manner. Another illustration is to be found in the Pittsburgh Plate Glass Company, which owns about 269 cars and uses them in securing coal for its plants in the Pittsburgh district, but obtains coal in system cars for its other plants in Indiana, Ohio, and Missouri. The Youngstown Sheet & Tube Company obtains 49 per cent of its coal in system cars. This includes both high-volatile and low-volatile coking coal. The New York Edison Company and the Consolidated Gas Company of New York each receives about two-thirds of its coal in system cars. Large quantities of coal are secured by private-car owners from mines on the Norfolk & Western, which does not handle private coal cars during car-shortage periods or at any other time. The evidence presented showed that many public utilities, including street railways, obtained their coal without private cars. It further shows that many mines in the districts where private cars are used produced coal for by-product coke, bunker coal, and other kinds of coal in competition with that moved in private cars.

It is to be observed that many of the private-car owners appearing in this case did not purchase cars until the abnormal period following the termination of Federal control of railroads. The following companies, for example, first acquired their cars in 1920: Steel Company of Canada and affiliated companies, International Harvester Company and its subsidiary company, Bethlehem Steel Company, Youngstown Sheet & Tube Company, and Seaboard By-Product Coke Company. The Pennsylvania Coal & Coke Company acquired

its 1,000 cars between the time of the original hearing in this case and the future hearing. The president of this company at the original hearing opposed the use of private cars. Of the cars of the Ford Motor Company and its subsidiaries 1,004 were also acquired subsequent to our original hearing in this case.

Many of the private-car owners deal with the contention of opponents of the private car that mines supplied with private cars have better working time than unassigned-car mines, by saying in a brief which they filed:

Only in a car shortage period, however, can the ownership of private cars be a matter of moment, for at all other times all mines are supplied in full of all car requirements. While it is a fact that since 1916 coal car shortages have been common, that is not the normal situation. Once we are out of our war and *post* war difficulties, the opposite condition, one of coal car surplus, may be more regularly contemplated.

This statement is justified by the record.

The fundamental problem is to determine whether differences in transportation conditions justify the inequality of treatment resulting from the assigned-car rule. The evidence which has been presented as to the economic necessity of individual shippers or classes of shippers does not, we think, warrant us in concluding that this inequality of treatment is justified under the provisions of section 1 and 3 of the act. Compare *Rates and Charges on Grain and Grain Products*, 91 I. C. C. 105. In case of emergency we may grant relief under the provisions of paragraph (15), section 1. What is reasonable action under that section, however, as we pointed out in our discussion of fuel cars, is a different question from the one presented here.

Extent of discrimination.—We have already dealt generally with the discriminatory effect of the assigned-car rule as applied to both fuel cars and private cars. Opponents of this rule introduced evidence to show the adverse effect of the rule in respect to private cars, particularly on the Louisville & Nashville, the Chesapeake & Ohio, and the Pennsylvania. It was shown that during car-shortage periods private-car mines received practically a full car supply, while other mines on the same division of the same railroad received a comparatively small percentage of the cars ordered. Private-car owners themselves, in introducing evidence as to the necessity of the assigned-car privilege, showed in many instances the discriminatory effect of the rule. During car-shortage periods mines at which their cars were placed were able because of better car supply under the assigned-car rule to operate more regularly, at less expense, and with more efficient labor organization than such mines were able to operate with system cars only and than other

mines similarly situated on the same railroads and depending entirely upon system cars were able to operate. As illustrative of this, the Fordson Coal Company, a subsidiary of the Ford Motor Company, had a car supply of approximately 22 per cent at its mine on the Louisville & Nashville for the six months' period prior to the first placement of its private cars at its mine in February, 1923, and was able to produce only about 34,000 tons of coal a month, while in March with practically a full supply of private cars it was able to produce about 72,000 tons, although the car shortage continued. The costs per ton were reduced from about \$4 in November, 1922, and \$3 in January, 1923, to \$1.93 per ton in March, 1923, and labor at the mine was better satisfied. During the period when the Fordson Coal Company was dependent upon system cars other private-car owners in the same district received practically a full supply of private cars at their mines.

Further evidence of the advantage which private-car owners received from the preferential placement of their cars under the assigned-car rule is to be found in the fact that they are willing to lose many hundred thousands of dollars in the operation of their cars in return for the advantage of such preferential placement during car-shortage periods. The railroads pay to private-car owners an allowance of 1.5 cents per mile for use of their cars. This, it was testified, was hardly sufficient to pay the cost of repairs alone. The Westmoreland Coal Company showed, for example, that for the two years and nine months ending September 30, 1923, the revenues received for the use of its 2,019 cars were \$784,424, expenses for repairs amounted to \$820,755, total expenses including interest and depreciation amounted to \$1,329,488, and the net loss to the company was \$545,064, or a loss per ton of coal handled in private cars of 18 cents in 1921, 13 cents in 1922, and 8 cents in the first nine months of 1923. Private-car owners, it is to be observed, use their cars throughout the year, both in periods of car shortage and in periods of full car supply.

As to the contention that the use of private cars during car-shortage periods releases railroad cars for commercial mines, which otherwise would have to be placed at private-car mines, "this overlooks the fact," as we pointed out in our original report, "that particularly in time of shortage the mine operator is entitled to an equitable rationing of the transportation facilities which are at hand, and that equality is vastly more important to him than a slight addition to his allotment effectuated by giving his neighbor and competitor a better car supply." Furthermore, if private cars should be withdrawn from carrier service and the remaining supply of cars should be

inadequate, we have power under the act, as we also pointed out in our report, to require the carriers to furnish an adequate supply.

Contention as to impairment of investment.—Some of the private-car owners contend that they have invested many millions of dollars in reliance upon the rule laid down in the *Hocking Valley case* and *Traer case*, and that if we should now prohibit placement of such cars in excess of the pro rata allotment of the mines to which they are assigned or consigned, we would take away the only advantage of such cars and in practical effect wipe out the investment which has been made.

In our original report we did not find that the use of private coal cars should be prohibited or that they should not be placed at the mine to which they were consigned. What we did prohibit was the placement of such cars at a mine in excess of the pro rata share of available cars. Private-car owners were left free to continue to use their cars and to have them so distributed to designated mines as not to exceed the pro rata share of such mines. That large sums may have been invested in reliance upon a rule which is unreasonable and unjustly discriminatory or may become or be found so under the interstate commerce act does not mean that we are powerless to change the rule and prescribe a just and nonpreferential one. *Douglas & Co. v. C., R. I. & P. Ry. Co.*, 21 I. C. C. 97, 101; *So. Pac. Co. v. I. C. C.*, 219 U. S. 433; and *Louisville & Nashville Ry. Co. v. Mottley*, 219 U. S. 467.

If we permit the assigned-car rule to continue, it is reasonable to expect that the number of private cars will increase, and, as we said in our original report, page 559:

The result is not only an increasing gross inequality between users of this form of equipment who are able to afford the very considerable expense in procuring and maintaining such equipment, reflected immediately in the disproportion between the amount of their output or consumption as the case may be, but also that the available facilities of the railroad carrier other than cars—locomotives, tracks and terminals—are taken up in great degree by such classes of preferred users, so that the commercial mines are and will find themselves unable to procure transportation for even the ratable share of the cars which the carrier owns and sets for them.

Upon the facts shown of record we affirm the findings in our former report, 80 I. C. C. 520, and find and conclude that in the distribution of cars for transportation of coal among the bituminous-coal mines served by the respective respondents, and each of them, whether located upon the line of a respondent or customarily dependent upon it for car supply, or whether owned or leased by or furnishing their entire output to a respondent, any rule, regulation, or practice of the respondents, or any of them, whereby private cars or cars for the loading of bituminous coal for railway-fuel pur-

poses are placed at any such mine in excess of the pro rata allotment and distribution of cars for coal loading, currently made to any other of such mines which do not receive private cars or cars for railway fuel and which are on the same division or district established by such respondent for the distribution of cars, is and for the future will be, unjust and unreasonable, and unduly and unreasonably preferential of such mines receiving private cars or cars for railway fuel in excess of such allotment, and unjustly discriminatory against and unduly prejudicial to such other mines not receiving private cars and cars for railway fuel. We further find and conclude that all cars should be distributed by such respondent to all mines on such district or division on a pro rata basis; and that if cars are assigned or consigned to any of such mines, and if they are placed at the mines to which they are assigned or consigned, they should be so placed that every mine on the same division or district should receive the same pro rata share of the total number of available cars, whether assigned, consigned, or unassigned, which are distributed to all mines on such division or district, and that all such assigned or consigned cars should be counted and charged against the mines at which they are placed in the same manner and to the same extent that unassigned cars are counted and charged. It is not intended that this finding shall prevent the assigning of privately owned cars or cars for railway fuel to designated mines, provided such mines are not thereby given more than their pro rata share of available cars. It is also not intended that this finding shall preclude the commission hereafter, in proper cases, in the exercise of the emergency powers conferred upon it by paragraph (15) of section 1 of the act, from requiring the placement of cars for bituminous-coal loading at any mine or mines in excess of the current percentage allotment made to mines generally upon the lines of the same carrier, or upon the same division, when the order or direction for placement shall so provide.

The effective date of our order entered in this proceeding June 13, 1923, has been postponed until January 15, 1925. The statutory period of notice is not less than 30 days. We will enter an order making that order effective on March 1, 1925.

EASTMAN, *Commissioner*, concurring:

I concur in the majority report, except so far as it sustains the conclusion of the original report with respect to the interpretation of paragraph (12) of section 1 of the act. My views with respect to that paragraph were stated in my former separate expression, 80 I. C. C. 520, 563, and to these views I adhere. COMMISSIONER CAMPBELL joins me in this expression.

HALL, *Chairman*, dissenting:

The considerations which prompted my dissenting expression appended to the former report, 80 I. C. C. 520, at 564, are fortified and confirmed by the additional record now before us. I can not escape the conviction that the majority have gone outside of transportation conditions, and thus outside of the proper scope of our powers, to make their findings of unreasonableness and undue prejudice. To my mind these findings are baseless, without warrant in fact or law, and I can not refrain from saying so when, under guise of a decision by this commission, they become armor, shield, and sword for a grave menace to the common welfare. Those who have experience in such matters well know that no workable substitute has yet been devised for the assigned car in supplying carriers with necessary fuel during periods of car shortage, and that if and when those periods come our priority orders must require what is here condemned by the majority as unlawful.

The private car, as my brother DANIELS observed in his dissent from the former report, is not an outlaw. It has its uses at all times, and not merely in times of emergency. Under proper regulation, such as we have devised or can devise, it should continue to perform its important functions. The power to tax may be the power to destroy, but that is not true of the power to regulate.

POTTER, *Commissioner*, dissenting:

I am unable to agree with the majority report on further hearing. I set forth my views at some length in my former dissent, and would not find it necessary now to elaborate were it not for the additional facts developed upon the further hearing, which to my mind demonstrate the unsoundness of the majority view.

There are two aspects of this proceeding which were brought into brighter light upon further hearing. One is the propriety and necessity for assigning cars at railway-owned mines or at total-output contract mines located upon the line of the owning or contracting carrier where such contract extends over a considerable period of time. It has been made to appear that to so assign cars is squarely within the intent of Congress in enacting paragraph 12 of section 1 of the interstate commerce act, and in accordance with the view of the commission which recommended the enactment of that section because such assignments were essential and for the express purpose of sanctioning them. The other aspect is presented by the additional testimony as to the importance of the use of the private car as essential to certain lines of industrial development, and particularly to the by-product coking industry and the ramifications thereof. In my original expression I alluded to the effect of the

majority report, if not set aside by the courts, upon the steel industry and certain others. The additional testimony upon further hearing demonstrates that the majority report, if given effect, will attack in a most disastrous way a vast and growing industry based upon the by-product coking process, which is perhaps the most glorious achievement of this country along scientific lines.

ASSIGNED CARS FOR RAILWAY FUEL

Many of the ills with respect to the assigned car for railway fuel arose from the day-to-day assignment, or, stated differently, at mines from which the carriers secure only a part of their fuel requirements. In the original report the majority set forth the rules which the carriers at that time advocated. These rules followed a literal compliance with the rules prescribed by the commission in the *Hocking Valley case* and *Traer case*, with the added proviso that cars assigned to mines for loading of other coal upon order of the Interstate Commerce Commission would be designated as "assigned cars." Under a literal interpretation of our decisions in those cases it would seem that the day-to-day assignment was permissible. In them we stated that where a carrier owned the mine, or contracted to take its entire output, the cars need not be counted. We did not specify the period of time for which such total output was to be taken. Many of the carriers, in apparent compliance with these decisions, took the output of certain mines on a day-to-day basis, and furnished such mines on such days during car-shortage periods cars in excess of the pro rata share to which those mines would have been entitled if shipping wholly commercial coal. The next day or days such mines would again be placed on the commercial basis, but the excess cars placed at the mine on the day on which the railroad took the entire output were not taken into account, that is, there was no equalization effected on the subsequent days when cars were placed for commercial loading. The result was, that such a mine undoubtedly secured a preferential car supply on such days on which it supplied its entire output to the carrier.

The record indicates that some of the operating officials of the carriers did not comprehend what was embraced in the term "assigned car." This was emphasized by an exhibit filed subsequent to the hearing, which is a compilation of replies made by certain of the respondents to an inquiry addressed to them by the car-service division of the American Railway Association. These replies in some instances contradict the oral testimony given by witnesses for the same carriers. This misunderstanding, and the abuses of the rules which followed therefrom, makes it certain that some uniform

rule should be adopted. This is now recognized by the respondents. Upon the further hearing they did not insist upon the right to assign cars at partial-output mines, but insisted upon the right to assign cars at railroad-owned mines, or at those from which they take the entire output over a substantial period of time, thus eliminating those mines entirely as effective competitors of mines shipping coal commercially.

In the original majority report the history of paragraph (12), section 1, of the interstate commerce act is set forth in some detail. From what is there stated it seems clear that what the Congress intended was not to prohibit the assignment of cars at railroad-owned mines or at total-output mines, but that it clearly recognized, as this commission has in numerous decisions, that the carriers were at liberty to place cars at such mines without regard to the distributive share to which those mines would be entitled if shipping coal commercially.

The language of paragraph 12, it seems to me, is clear on this point. It provides that it shall be the duty of every carrier by railroad to make just and reasonable distribution of cars for transportation of coal among the coal mines served by it, whether located upon its line or lines or customarily dependent upon it for car supply. The first question to be determined is whether railroad-owned mines or total-output contract mines are served by the carrier, and therefore whether there is any duty upon the carrier to make just and reasonable distribution of cars for transportation of coal amongst such mines. A railroad sells transportation. That is its function. It does not sell transportation to mines which it owns, or to those from which it has contracted to take the entire output over a long period of time. Webster's Dictionary defines the word "serve" to mean "to work for, to labor in behalf of, to be in the employment of, etc." The first sentence in paragraph 12 relates to carriers which *serve coal mines*. It seems clear that when a carrier places at its own mine, on its own line, or at a mine on its line from which it purchases the entire output, such coal to be used as company fuel, the railroad does not *serve* the mine. On the other hand, the mine serves the carrier. The seller serves the buyer. The mine sells its services and product, and serves the carrier for compensation. The merchant serves his customers. The gasoline station serves the automobile owner when it places gasoline in the automobile tank. When a railroad sells transportation to a coal producer it serves the latter, but when a coal mine sells coal to a railroad its position is reversed, and the coal mine then serves the railroad. The fact that the railroad supplies some of the instrumen-

talities for removing its own coal from the mine does not change the relation. If a retail coal dealer sells coal to a householder the relation of buyer and seller is not changed by reason of the fact that the buyer brings his own conveyance and takes the coal home. The difference is merely in the extent of the service rendered by the seller. It seems to follow that when a railroad contracts with a mine to supply it with coal over a substantial period of time, or when the railroad owns the mine which supplies it with fuel coal, the coal mine becomes the servant of the railroad for hire, and the railroad by placing cars, which for the time being are company-service cars, at the mine for loading coal, is serving itself just as much as when it places cars at a coal-stock pile to be loaded by its regular employees.

In both instances the loaders are serving the carrier; in the one case the employee sells his service, in the other he sells his service plus his product. It should be noted here that freight service supplied by a railroad is made up, not only of human labor; it includes coal, oil, or some other fuel which is converted into and supplied in the form of energy so that even when a railroad serves a coal shipper by transporting its product it also supplies coal as well as human labor. The foregoing only applies to owned or long-term contract mines located upon the line of the owning or contracting carrier's line. The needs of the foreign carrier with respect to its fuel supply are, if anything, more urgent than those of the carrier which has coal mines located upon its line. Any rule, therefore, which is adopted with respect to the assignment of system cars should likewise apply to the assignment of foreign railway fuel cars.

The opinion of the majority relies upon the decision of the Supreme Court of the United States in *Interstate Commerce Commission v. Ill. Cent. R. R. Co.*, 215 U. S. 438, as sustaining the position that we have authority to regulate the supply of cars at railroad-owned mines or at total-output contract mines even where that contract extends over a long period of time, and they quote at some length from the decision of the court to sustain that view. The question before the court in that case, however, was whether we were correct in our finding that fuel cars, both system and foreign, at *partial-output mines*, and private cars, should be counted in the distribution of available cars. The question of assigning cars at railroad-owned mines or at total-output mines was not before the court. That decision seems to hold that under section 1 we have the power to control the facilities of the carrier, even though used for its own private purpose, where necessary, to avoid undue preference and prejudice under section 3. It is conceded in this record that the only prejudice or discrimination as between a railroad-

owned mine or a total-output mine and the mine which ships its coal commercially is in the labor market, or, as stated by one of the counsel at the argument, competition in the upkeep of the mine or ability to purchase coal as advantageously as the assigned-car mine produces it, whether it be classified as labor, supplies, or overhead.

In the prior report the majority found that there were more than enough miners to produce coal for all purposes, and that there were more mines than is consistent with the most efficient use of equipment, and that their aggregate capacity exceeded the country's demand.

The mining of coal does not constitute interstate commerce, neither is the hauling of coal or other company material for its own use common carriage by railroad within the purview of the act.

The question of mine labor necessarily takes into account differences in circumstances arising before the service of the carrier begins, and I am unable to follow the majority that we can take those facts into consideration in determining whether undue preference or undue prejudice exists under section 3. We have the undoubted right, under the interstate commerce act, to control the facilities of the carriers so as to avoid unjust discrimination or undue prejudice as between shippers or receivers of property. We can not, however, regulate the coal industry except as it is incidentally affected by a proper regulation of car supply as a matter of transportation. The railroad-owned mine or the total-output contract mine are operated continuously the greater part of the time whether there is a car surplus or a car shortage. Other mines operate only when they have orders for coal, and in many instances only in periods of peak demand and high prices. It is only natural, therefore, that mines operating practically full time can command the better class of mine labor. It seems to me that if, during periods of car shortage, we were to undertake to regulate the car supply so as to result in equal working time for all mines, we would be going far afield in the regulation of transportation with which we have to deal.

The finding of the majority, as I interpret it, predicates the finding of unreasonableness, unjust discrimination, and undue prejudice chiefly on the ground of the effect which the unequal distribution of cars has on mine labor.

In a series of decisions under Docket 12066, *Construction and Repair of Railway Equipment*, we considered the practice of the carriers in using outside shops in repair and construction work, and found that they made unreasonable and uneconomical expenditures. We censured the carriers for exercising their best judgment in having repairs made at a time when such repairs were necessary at outside

shops instead of resorting to their own shops. The majority opinion in this case, it seems to me, is just the reverse of what the commission found in the case cited. Take the Chesapeake & Ohio as an example. It owns three mines, and employees in those mines are on the Chesapeake & Ohio pay roll, the same as any employees which operate the railroad. We, in effect, are saying to the Chesapeake & Ohio, that "although you can mine your coal cheaper in your own mines than you can secure it from elsewhere during periods of car shortage, nevertheless, you must not place cars at your own mines in excess of the pro rata share, and you must secure your other coal elsewhere at whatever price it is necessary for you to pay therefor."

On page 719 the majority report refers to certain further evidence introduced by opponents of the assigned-car rule on further hearing. The summation of the evidence referred to, which was in the nature of an exhibit filed, shows that had there been a pro rata distribution of all cars in the eastern and central regions of the Pennsylvania Railroad the supply to commercial mines for the eight months ended April 30, 1923, would have increased from 34.23 per cent to 54.02 per cent of the commercial cars ordered, or an increase of 57.81 per cent over the supply received by the commercial mines during that period. I think this is an erroneous conclusion to draw from the evidence. The exhibit in question shows, for example, that there were available for the month of September, 1922, more than 17,000 assigned cars in excess of requirements.

It is well known that we were in the throes of a coal strike from the first of April until well along in August, and that the large majority of mines in the central region of the Pennsylvania Railroad were union mines, and therefore closed down during the period of the strike. Many of those mines are owned by private-car interests, and many of the assigned cars available were doubtless private cars being held at the mines of the owners for the resumption of mining operations.

The central region of the Pennsylvania also supplies a large quantity of railway fuel not only for the Pennsylvania Railroad but for other carriers. If the assigned cars had been prohibited at that time, as the majority report now would prohibit them, the private cars, as well as many of the fuel cars, would not have been in that particular region at that time. To say, therefore, that the percentage of cars at commercial mines would have been increased to the extent indicated, is fallacious. The private cars could not be placed by the carrier at mines other than as directed by the owner of such cars. If those cars were eliminated and the railway-fuel cars prorated in the district or division in which they were on the particular dates covered by the exhibit, it may well be that the carrier would

then have been guilty of unjust discrimination in the supply of cars as between divisions or districts, which it would have been necessary for it to have equalized later.

PRIVATE CARS

Prior to our decision in the *Hocking Valley case* the carriers generally followed the practice of not counting private cars in the distribution of cars to coal mines. The mines were given all the private cars, assigned or consigned to them, and in addition their pro rata share of the available carrier equipment. In the *Hocking Valley case* we held that the private cars should be counted and considered in the distribution of equipment; that the owners or receivers of such private cars should be given full and exclusive use of them, but should not be given a division of the system cars except when the supply of the so-called private cars was less than their pro rata share of the total available cars, including system cars, foreign railway-fuel cars and so-called private cars.

In *United States v. Baltimore & Ohio R. R. Co.*, 154 Fed. 108, the Circuit Court of the United States for the District of Maryland had before it practically the same issue as before us in the *Hocking Valley case*. In that case a petition for mandamus was filed to require the Baltimore & Ohio Railroad to cease from subjecting the relator and other coal companies on the Monongah division to undue and unreasonable discrimination in the shipping and transportation of coal. It was a practice of the respondent at that time to place private cars at the mines without taking those cars into account in arriving at the pro rata distribution to which the mine was entitled. In other words, the mine was given all the private cars assigned or consigned to it and in addition its pro rata share of system cars. The court in substance found as we had previously found in the *Hocking Valley case* that the owners of individual cars or those entitled to them by contract were not to be deprived of the exclusive use of such individual cars but that such cars assigned by the owner to be loaded at specified mines should be charged against the specified mine as part of its pro rata distribution of cars. At page 114 the court said:

It would not be reasonable to hold that the exclusive use of individual cars by the mine operators under a system which has grown up during half a century and under which the trade has enormously developed, and upon the faith of which mine operators have invested millions of capital, often at times when the railroad company had neither money nor credit with which to increase its equipment, is now to be denied unless it could be done upon fair terms mutually acceptable to the mine operators and the railroad. The use of individual coal cars is not peculiar to the Baltimore & Ohio Railroad, but has been quite generally used from the beginning of the coal trade in the United

States and in England. While it is true that, if the railroad was so disposed, it might by not keeping up its coal car equipment gradually force all mine operators to provide individual coal cars, which would in the end leave in the business only those operators who were able to obtain and profitably use the large capital required to purchase individual cars, it does not appear that the railroad has pursued that policy. On the contrary, in 1905 it ordered 5,000 new coal cars of large capacity, increasing its total coal car equipment to about 45,000, and also increased its engine equipment so that it is abundant. Under the present system of individual ownership of coal cars it is not unreasonable that the owner shall have the exclusive use of his individual cars; on the contrary, it is only just. But, under the actual circumstances of the business of the coal trade on the Baltimore & Ohio Railroad, from which it is apparent that the great struggle of the mine operators is to get sufficient cars to ship their product during the winter months, and that their business existence depends upon it, it is not unreasonable to hold that the railroad shall do all that it is practicable to do to avoid subjecting the operators who do not have the use of individual cars to unreasonable disadvantage. While it is true that the existence in the trade of a large number of individual cars does increase the total car equipment, and so far as the individual cars satisfy the requirements of their owners does increase the number of free equipment cars which the railroad has at its disposal, it still is a fact that in times of car shortage the demand is so great that all the mines having individual cars require and get their full percentage of the railroad's equipment without reference to their own cars.

Under the provisions of the interstate commerce act the railroad must abstain from giving any undue or unreasonable preference or advantage to any mine owner in any respect whatsoever. The duty of the railroad under section 1 is to furnish transportation upon reasonable request. It is not the duty of the shipper, but of the railroad, to provide the required vehicles of transportation. If, for convenience or of necessity, the vehicles are furnished by certain of its shippers, and are run regularly on the road just as its own equipment is run, they are, I think, to be treated for some purposes as part of the equipment of the road. These regularly run individual cars occupy the tracks and sidings. They are drawn by the locomotives, and are operated by the employes of the railroad company, and must lessen the facilities in that respect of the independent operators. Indeed, an objection of the railroad company to individual ownership of cars is that they require special switching and special care to collect and classify them in order to haul them to their respective destinations. As the independent mine operators have in this manner to suffer from individual cars being transported as part of the railroad's equipment in such large and constant numbers running regularly on the railroad's lines, it seems only reasonable that, when distribution upon percentage is made, all this regular equipment then available should be taken into the calculation, and not to first deduct the individual cars and give the independent mine operators only their percentage of the remaining available equipment. This taking of individual cars into calculation would not be depriving the individual car owner of the exclusive use of his cars, and it would not be depriving him of any contractual right which he is entitled to retain and enjoy under the interstate commerce act. The mine operator would in any state of the car supply continue to get the exclusive use of his individual cars as before, but, when the supply was short, he would not get so many of the railroad's general equipment. It would be rectifying an un-

reasonable disadvantage which has been shown to work a serious hardship upon the relator and the independent mine operators in the Fairmont region.

This case came before the United States Circuit Court of Appeals for the Fourth District on writ of error upon the judgment of the lower court by both the petitioner and respondents. In *U. S. v. Baltimore & Ohio R. R. Co.*, 165 Fed. 113, the court affirmed the decision of the lower court on the question of private cars. The case reached the Supreme Court of the United States upon error prosecuted by the Baltimore & Ohio Railroad and the Fairmont Coal Companies, and in *Baltimore & Ohio v. Pitcairn Coal Co.*, 215 U. S. 481, the Supreme Court reversed the decision of the lower court in all particulars on the ground that the court was without jurisdiction to pass upon the matters involved until after the commission had been properly afforded an opportunity to exercise its administrative functions. In the majority report reference is made to a statement of the general principles which should be applied as found in the decision of the Circuit Court of Appeals in the case cited, and an extract from that decision appearing on page 122 is quoted. The principles there set forth are in entire accord with what the commission has always held should govern. In fact, the private-car owners are seeking no different principles in this proceeding. They are contending for the right to have the exclusive use of their private cars even though during periods of car shortage the private cars so placed at a mine may exceed the pro rata share to which that mine would be entitled if dependent solely upon system cars. They are seeking this right only in the event that there is a shortage of cars unaccompanied by a shortage of locomotives, track facilities, congestion, or any cause which would tend to interfere with normal operation of the carriers. In the event that by the placement of private cars in excess of the pro rata distribution an undue proportion of the general facilities of the carrier are accorded to the private-car owners and thus denied to users of system cars, the private-car owners are willing to share the disability with all other shippers.

Under the majority decision, however, under a situation such as this the private-car owner would be denied the right to have its cars placed in excess of the pro rata distribution and the cars over and above such pro rata distribution would remain idle; this during a period when there was a general clamoring for coal with the resultant high prices. The majority report also refers to and quotes at length from the decision of the commission in *Rail & River Coal Co. v. B. & O. R. R. Co.*, 14 I. C. C. 86, at page 92. In that case the commission adhered to what it had previously found in the *Hocking Valley case*, and the paragraph quoted is in entire accord with what the private-car owners are here seeking.

In its report to the Congress on discriminations and monopolies in coal and oil, made in 1907, the commission expressly recommended that—

After reasonable time carriers engaged in interstate commerce be prohibited from using "individual" or "private cars" for the handling of coal traffic; and further, that when a carrier is unable to furnish all the cars required by all the shippers upon its line, all cars in service on the road, excepting individual or privately owned cars until their use is prohibited, be treated as the equipment of the company, and subject to distribution according to the system or plan in effect at that time.

Congress did not take the affirmative action recommended although the commission in many of its annual reports to the Congress embodied recommendations of like effect.

In *Ruttle v. P. M. R. R. Co.*, 13 I. C. C. 179, the commission in dealing with the private-car situation, said:

But while the right to use private cars may doubtless be denied to shippers by appropriate legislation, we are not prepared, in the absence of a specific enactment to that effect, to say that their use is in itself unlawful. Whether under a given set of circumstances their use results in an unlawful advantage to their owners and in an unlawful disadvantage to others is another question, which under existing legislation is clearly under the control of the Commission, and may be made the basis of such relief as the facts in any particular case may justify.

Private cars have been in operation in this country over half a century. The record shows that the Westmoreland Coal Company has been operating private cars for more than 60 years and the Berwind-White Company for more than 35 years. Under the system of private ownership of coal cars the trade has enormously developed, and dependent upon its continuance these mine operators and others have invested millions of capital, often at times when the railroads had neither money nor credit upon which to increase their equipment.

Under the circumstances it seems clear that it would not be reasonable to hold that the exclusive use of such private cars should be denied, in times of car shortage, even though the private cars so placed at the mine are in excess of the pro rata share of cars currently accorded mines dependent upon system cars. The use of the private car during car-shortage periods increases the supply of system cars available to the operators dependent upon them and is a real benefit.

This naturally leads to the question, what is the material complaint against the use of the private car? Here again the answer is, as in the railroad-owned or total-output contract mine, the labor supply, but as heretofore pointed out, this is a matter which precedes any transportation service which a carrier is called upon to perform, and is not a matter upon which we could predicate a finding of un-

just discrimination or undue prejudice. Orders under section 3 are usually in the alternative and give the carrier the option of removing the undue prejudice in one way or another. In the event that the order were made in the alternative in this case, by what means could the carrier comply with our order? It certainly has no control over the mines. It could not direct that the labor supply at certain mines be transferred to other mines so as to enable those mines to operate equal time. The element of taking mine labor into consideration in determining whether or not discrimination or undue prejudice exists under the interstate commerce act is entirely too remote and speculative to be given any consideration whatsoever.

As above pointed out, the private-car owners are not here seeking any advantage over the mine owners dependent upon system cars in the use of any of the general facilities of the carriers.

Is there anything unreasonable in the practice of according to private-car owners a greater proportion of the carriers facilities than that accorded operators dependent upon system cars when in so doing it is not to deny the operators dependent upon system cars reasonable service? Or, stated differently, if the carrier moves all traffic offered it by the operators both in private and system cars, and it so happens that there is a shortage of system cars, and that the private cars predominate in number, would it be unreasonable to transport all the private cars and system cars, or should the private cars moved not exceed the percentage of system cars placed at the mines and offered for transportation, the balance of the private cars to remain idle? To state the proposition is to answer it.

The act contemplates the furnishing of service and of the facilities by the owner or the shipper of freight. Section 15, paragraph (13).

The Congress has thus recognized the use of the privately owned cars and has limited our power to touch that right to our power over the carriers. We can not declare that right unreasonable or unjustly discriminatory, or unduly prejudicial or unlawful because of something that is inherent in the nature of that right, because by so doing we would be abrogating a right which the Congress has recognized and which we have stated could only be abrogated by appropriate legislation. If in the exercise of that right preference is accorded to the private-car owners in the use of the carriers' general facilities another question is present. A perusal of our decisions in this question, as well as those of the courts, will show them to be in full accord with this reasoning. There has been no change in the law since those decisions which would warrant us in now holding otherwise.

Upon the further hearing much new evidence was submitted to support the claim of the necessity for the use of private cars by some of our most vital industries.

The private-car owners can be grouped generally into three classes:

(1) Those that own the plants, the mines, and the cars, the latter being used to transport coal from the owned mines to the plants of the owning company. In this class are included the Bethlehem Steel Corporation, the United States Steel Corporation and its subsidiaries, Pittsburgh Plate Glass Company, Youngstown Sheet & Tube Company, Wisconsin Steel and International Harvester Companies, Ford Motor Company, and the Steel Company of Canada.

(2) Those that own the cars and the plants, but not the mines, and which have long-term contracts with specified mines for the entire output of such mines. Included in this class are the by-product coke ovens not connected with the steel and other plants enumerated in class 1, and the Public Service Electric Company.

(3) Those that own the cars and the mines, but which are dependent upon outside contracts for the disposition of the coal. In this class may be included the Berwind-White Coal Company and the Westmoreland Coal Company.

The necessity of each class for a regular supply of suitable coal was explained at great length by high officials of corporations represented by each of these groups. Time and space will not permit an elaborate discussion of the vast amount of the very illuminating facts presented by each. I will therefore content myself to briefly point out some of the essential facts which show conclusively the absolute necessity for the steel and by-product coke corporations to secure a regular and adequate supply of suitable coal, which the past has demonstrated can not be secured alone in system cars during periods of car shortage.

The Bethlehem Steel Corporation at the time of the hearing operated over 2,000 by-product coke ovens, which are located at its different plants. These plants produce nearly every class of finished product, including rails, frogs, switches, railroad cars, structural steel, and ordnance material. These products require the finest grades of steel, particularly with reference to phosphorous and sulphur content. As the use of steel making continues to develop, the necessity for selecting special coals will increase. One of the greatest economic developments in the steel industry during the past 20 years has been the utilization of by-products of coking coal. These by-products can only be utilized at the works, because at the coal mines there are no uses for the gas and other by-products. The character of its coking qualities and its physical characteristics

have to be considered with great care to make the coke from the by-product ovens suitable for immediate use in the blast furnaces. It is necessary, therefore, to select the coal mines which produce suitable coal, and even at best the coal from suitable mines must usually be mixed with coal from other mines to get the desired results. Coke of an inferior quality manifests itself mischievously in a blast furnace on account of what is termed "structure." Not all low-volatile coal offered can be used, because to be suitable it must be of a certain chemical composition and possessing a property commonly called "caking." For the steel industry coke in large lumps is necessary, the size being important on account of the service being required in the furnace, thus narrowing the field from which coal for this purpose can be secured. This property of the coal which results in "caking" is lost by storage. A daily tonnage of coke is required, as blast furnaces are designed and built for continuous operation. Interference with this operation means many ills to the furnaces and their subsequent operation.

This corporation owns 31 coal mines, with an approximate present capacity of 9,500,000 tons per annum. These mines were most carefully selected for the metallurgical and coking qualities of their coal. Of the coal available to it only 15 or 20 per cent is suitable for coking purposes. Over 300 coal properties were tested with a view to purchasing, and only 5 per cent of them contained coal meeting the physical and chemical requirements to produce coke for steel making. After the selection and purchase of these specific mines it proved impossible, in times of car shortage, to move enough coal from them to the plants to keep the plants in operation. Partial shutdowns with attendant unemployment followed. The result was the purchase of 3,975 private coal cars, which are used solely in transporting coal from the mines to its own plants for its own consumption. No system cars are used at the mines using private cars.

A by-product coking plant is usually made up of one or more blocks or batteries of ovens. All batteries in one plant are of uniform height. Each oven has a system of flues in which gas is burned and the oven is heated through a silica wall from 4 to 6 inches in thickness. The ovens are built of silica brick. It is necessary to heat the oven very gradually as the brick has a very high factor of expansion. One battery of ovens will expand as much as four feet. The expansion joints in the brick work are between every two ovens, which makes it necessary to heat these two ovens carefully and gradually. It takes from six to eight weeks to heat a plant before it can be put in operation. If shut down suddenly it would wreck the brick work and cost from \$300,000 to \$500,000 for replacement. If the battery has to be cooled off it is put out of operation

for from two to three months. The brick required for these ovens are in specially molded shapes and are not carried in stock, and take four months to make. The essential elements for the successful operation of a by-product coking plant are a continued operation, with a continuous and regular supply of high-grade coal of uniform quality. A continuous operation is necessary because the by-product plants are under contract to furnish daily a fixed amount of gas to the gas companies, which, in turn under their franchises, furnish gas to numerous municipalities, and generally speaking, have no facilities of their own for producing gas. A regular supply of a particular kind of coal is necessary to secure the volume of gas required. The quantity, quality, and b. t. u. content of the gas so furnished must be constant, and must also meet trade requirements.

Not all coal is good gas burning or coke running, due to the volatile content. A sudden change from one coal to another would cause trouble. As indicating the importance of the constant supply of suitable coal, one of the large by-product plants maintains a test plant to determine the kind of coke which can be made from the different grades of coal. Before contracting for coal from 500 to 1,000 tons of coal are run through the plant and the cokes thus produced are furnished to the trade for the purpose of determining whether that particular coke will meet requirements. Coke produced at such by-product plants must be of uniform grade, low in sulphur, and uniform in structure, as it competes with that received from the beehive coke ovens located at or adjacent to the mines, which always secure a uniform supply of coal. Beehive ovens are crude, simple, and inexpensive; can be started up or shut down without serious injury, and are located close to the mine. They receive their coal continuously from the same mine and therefore produce a uniform product. They are therefore not subject to the transportation difficulties encountered by the by-product ovens. Coke made in by-product ovens is to a large extent supplied to plants operating water-gas machines. This coke must be low in ash, that does not fuse at low temperature. Otherwise the machines will become clinkered and the capacity will be reduced 50 per cent. If the coke is bad the gas company's capacity is cut down and the public is not supplied. The by-product coke industry is vital to the private individual, or the householder because it helps to cheapen domestic gas, which supplies a high-grade domestic fuel that is cheaper than anthracite. It supplies sulphate ammonia which is the best raw material for fertilizer for the farmer, and has increased the output of this fertilizer material over 100 per cent. In 1900 a little over 1,000,000 tons of by-product coke were produced, whereas in 1920 the output was over 28,000,000 tons. Over \$200,-

000,000 has been invested in the last 10 years in by-product coke plants and their accessories. They are built throughout the country to augment the natural gas which is giving out in various districts. Its use is being extended very rapidly. The basis for the future chemical industry is dependent upon it. The dye industry in this country has grown enormously as a result of the by-product coke operations. The by-product coke industry of this country has made enormous strides in the last few years. The record shows that for every ton of coal coked in a by-product oven there is saved approximately, varying with the kind of coal used, 25 pounds of sulphate of ammonia, 6,000 feet of gas, 10 gallons of tar, and 3 gallons of motor fuel.

The by-product coke operators generally have had unsatisfactory experience in keeping their plants in operation with the kind of coal necessary, particularly during periods of car shortage. To protect against such shortage these private corporations have purchased coal cars and have invested therein several millions of dollars.

The aggressive and destructive attack which the majority report makes upon the by-product coking industry, retarding advance in the art of steel making and utilization of coal-tar products, is timely for the nation's rivals. The producers of Germany, and other European countries, are consolidating their position to take control of world markets, including our own, and to meet our growing rivalry. The phenomenal development of the coal-tar industry in this country since the beginning of the World War has been well said to be "one of the romances of American business, and world business as well." The American dye industry is an illustration, but dyes are only one of many coal-tar products. Others include roofing and road material, fertilizers, ammonia, benzol, motor benzol, toluol, naphtha, benzine, toluene, naphthalene, photographic materials, medicines, perfumes, flavors, and articles too numerous to mention.

The majority report gives this industry the most serious and alarming setback it has ever had. It is the greatest benefit that could be conferred upon our foreign competitors in science and industry. The one thing above all others they would have us do is to abolish the use of the private car. I can see no justification or excuse for the damage done. The private car, without adding a penny to the general burden, increases transportation facilities generally available. Its owners provide for themselves additional cars without which they would be entitled to share in the distribution of all other equipment. It is undeniable that those who oppose their use are benefited by them. To bar them serves only to foster private greed and envy at the expense of public welfare.

I have not attempted to deal exhaustively with the mass of unanswerable testimony placed before us upon further hearing which, seemingly, the majority report utterly ignores. Witnesses Rust, Berwind, Schwab, and other leaders in the industrial arts, have made a showing which should have enlightened us. I am unable to comprehend why they failed. They have conclusively demonstrated that the private car is essential to the economical and efficient bunkering of ships and to the carrying on of many of the most important industries in the country. No attempt to answer their testimony was made, and no answer is possible. Some of the most important achievements within the Nation's reach are dependent upon the use of the private car. On questions regarding industries so highly technical and scientific as the making of steel, and many other products, we should accept as basic facts the conclusions of specialists. We have such conclusions by the most eminent authorities in the country. By disregarding them and setting up our own impressions, we incur the censure that arbitrary action, without support in law or fact, denying justice, should bring upon us.

Cox, *Commissioner*, dissenting:

For reasons already set forth in my former dissenting expression in this case, 80 I. C. C. 520, at page 587, and from consideration of the additional testimony furnished at the further hearing, I am unable to concur in the findings of the majority.

This question is generally recognized as of vital importance, and perhaps no question which has come before the commission in recent years is more closely related to the industrial life of the Nation than this case which deals with the distribution of coal cars. Public utilities, transportation agencies, and other industries which are not only intimately associated with the distribution of heat, light, and power, but with practically all the necessities of life as well, are all dependent upon a regular and dependable fuel supply. The present efficiency in transportation is largely dependent upon an unfailing supply of coal. If this supply is reduced, or even restricted, the industrial life of the country is at once affected and the public welfare suffers accordingly. President Coolidge has emphasized the need for the elimination of waste and there is splendid opportunity for cooperation along these lines in the production and distribution of coal. Our position in connection with the competitive markets of the world also emphasizes the need for such cooperation. It is my thought that the use of the assigned car as well as private cars is along the line of efficiency and economy of operation. They both occupy an important place in the field of efficient transportation and their use should be encouraged rather than condemned.

CASES DISPOSED OF BY THE COMMISSION WITHOUT PRINTED REPORT DURING THE TIME COVERED BY THIS VOLUME

I. & S. 2106. LUMBER FROM MISSISSIPPI VALLEY POINTS TO SLIDELL, LA. Proposed increases in rates on lumber from points in the Mississippi Valley to Slidell, La. Protest being withdrawn as to certain items, and remaining items being canceled by respondents, proceeding discontinued December 8, 1924.

I. & S. 2196. TRANSIT ON LUMBER AT OHIO RIVER CROSSINGS AND RELATED POINTS. Proposed increase in transit charges on lumber at Ohio River crossings and related points. Respondents having filed tariffs canceling suspended schedules, proceeding discontinued December 8, 1924.

I. & S. 2210. SHELLS FROM MISSISSIPPI RIVER GROUP POINTS TO COLORADO. Proposed increases in rates on oyster, clam, and mussel shells from Mississippi River group points to points in Colorado. Respondents having filed tariffs canceling suspended schedules, proceeding discontinued December 8, 1924.

I. & S. 2213. PETROLEUM AND ITS PRODUCTS FROM OKLAHOMA TO KANSAS AND MISSOURI. Proposed increases in rates on petroleum and products from points in Oklahoma to points in Kansas and Missouri. Respondents having canceled suspended schedules, proceeding discontinued December 16, 1924.

I. & S. 2218. COTTON LINTERS, CARLOADS, FROM LOUISIANA POINTS TO NEW ORLEANS, LA. Proposed increases in rates on cotton linters, carloads, from points in Louisiana to New Orleans, La. Respondents having filed tariffs canceling suspended schedules, proceeding discontinued December 8, 1924.

I. & S. 2231. COAL FROM ILLINOIS TO THE NORTHWEST. Proposed increases and reductions in rates on coal from mines in Illinois to points in the Northwest. Respondents having filed tariffs canceling suspended schedules, proceeding discontinued December 8, 1924.

I. & S. 2233. RICE FROM MISSISSIPPI VALLEY POINTS TO SOUTHEASTERN AND CAROLINA TERRITORIES. Proposed increases and reductions in rates on rice from points in Mississippi Valley territory to points in Southeastern and Carolina territories. Respondents having canceled suspended schedules, proceeding discontinued December 8, 1924.

I. & S. 2243. TROPICAL FRUITS FROM NEW ORLEANS, LA., MOBILE, ALA., ETC., TO MISSISSIPPI VALLEY POINTS. Proposed increases in rates on tropical fruits from New Orleans, La., Mobile, Ala., and other Gulf ports to points in the Mississippi Valley. Respondents having filed tariffs canceling suspended schedules, proceeding discontinued December 8, 1924.

I. & S. 2250. MINIMUM WEIGHT ON RICE FROM, TO, AND BETWEEN SOUTHERN POINTS. Proposed increase in minimum weight and charges on rice between points in southern territory. Respondents having withdrawn and canceled suspended schedules, proceeding discontinued December 31, 1924.

I. & S. 2252. COTTONSEED PRODUCTS FROM TEXAS TO COLORADO AND WYOMING. Proposed increases in rates on cottonseed products from points in Texas to points in Colorado and Wyoming. Respondents having canceled suspended schedules, proceeding discontinued December 2, 1924.

13789. TEXAS FREIGHT TRAFFIC ASSO. *v.* DIRECTOR GENERAL, AS AGENT. Rates on cants from Chattanooga, Tenn., to Fort Worth and Ranger, Tex. Transferred to Special Docket for adjustment November 17, 1924.

14377. SIOUX CITY BRICK & TILE CO. *v.* DIRECTOR GENERAL, AS AGENT. Rates on brick and hollow building tile from points in Illinois and Iowa to points in Nebraska and South Dakota. Transferred to Special Docket for adjustment January 7, 1925.

14380. THILMANY PULP & PAPER CO. *v.* C. & N. W. RY. CO. Rates on nitre cake from Ishpeming, Mich., to Kaukauna, Wis. Transferred to Special Docket for adjustment December 22, 1924.

14803. NORFOLK LIGHT & FUEL CO. *v.* A., T. & S. F. RY. CO. Rates on gas oil from points in Arkansas, Kansas, Missouri and Oklahoma to Norfolk, Nebr. Transferred to Special Docket for adjustment December 22, 1924.

14980. GREENWOOD CHAMBER OF COMMERCE ET AL. *v.* A. & V. RY. CO. ET AL. Failure of defendant carriers to establish and maintain joint class and commodity rates from points in Indiana, Ohio, Pennsylvania, Michigan, West Virginia, Maryland, and other eastern States, and from southeastern and Carolina territories to and from interior Mississippi jobbing centers. Dismissed on request of complainants December 8, 1924.

15060. HAMLIN (INC.) *v.* P. R. R. CO. ET AL. Rates on blackstrap molasses in tank cars, from eastern points to Pittsburgh, Pa. Dismissed on request of complainant December 8, 1924.

15512. PARKERSBURG RIG & REEL CO. *v.* G. N. RY CO. ET AL. Rates on one carload of wooden bull wheel arms, cants, and pins from Parkersburg, W. Va., to Sunburst, Mont. Transferred to Special Docket for adjustment December 15, 1924.

15542. LOS ANGELES PRESSED BRICK CO. *v.* P. E. RY. CO. ET AL. Rates and charges on hollow building tile from Sunset, Calif., to Prescott, Ariz. Transferred to Special Docket for adjustment November 24, 1924.

15803. GRAHAM PAPER CO. (INC.) *v.* T. & N. O. R. R. CO. ET AL. Rates on wrapping paper from Orange, Tex., to Laredo, Tex. Transferred to Special Docket for adjustment December 15, 1924.

15890. ASSOCIATED FRUIT CO. *v.* A. C. L. R. R. CO. ET AL. Rates on cantaloupes from Camilla, Ga., to Tampa, Fla. Transferred to Special Docket for adjustment December 8, 1924.

15890. SUB-NO. 1. GEORGIA CANTALOUPE EXCHANGE *v.* A. C. L. R. R. CO. Rates on cantaloupes from Pelham, Ga., to Tampa, Fla. Transferred to Special Docket for adjustment December 8, 1924.

15982. ZARING & Co. *v.* C. S. S. CO. ET AL. Combination rates on potatoes in sacks from Arkport, N. Y., reconsigned at Dundee, N. J., and forwarded via the Clyde Line from New York, N. Y., to Jacksonville, Fla. Complaint satisfied. Dismissed December 8, 1924.

16117. INDIANAPOLIS BOARD OF TRADE *v.* B. & O. R. R. CO. ET AL. Export rates on grain and products from points in Indiana to north Atlantic coast ports. Dismissed on request of complainant December 8, 1924.

16186. PEASLEE-GAULBERT CO. OF GEORGIA *v.* L. & N R. R. CO. ET AL. Rates on denatured alcohol from New Orleans and common rate points to Atlanta, Ga. Dismissed on request of complainant December 8, 1924.

16265. HEINZIE, RECIEVER OF KEY COAL CO. *v.* S. RY. CO. Failure of defendant to supply complainant's mines in Warwick County, Ind., with sufficient number of empty cars. Dismissed on request of complainant December 8, 1924.

16268. WENATCHEE DISTRICT CO-OPERATIVE ASSO. *v.* G. N. RY. CO. ET AL. Rates on two carloads of berries from Wenatchee, Wash., to Chicago, Ill. Complaint satisfied. Dismissed December 8, 1924.

16269. UNITED CENTRAL OIL CORP. *v.* L. & A. RY. CO. ET AL. Rates on petroleum and products from points in Louisiana to Houston, Tex. Dismissed on request of complainant December 8, 1924.

16293. DU PONT DE NEMOURS & Co. *v.* B. & O. R. R. Co. ET AL. Rates on nitrate of soda from Philadelphia, Pa., and Baltimore, Md., to Fairchance, Pa. Dismissed on request of complainant December 8, 1924.

TABLE OF CASES DISPOSED OF WITHOUT PRINTED REPORT

	Page
Alabama & V. Ry. Co., Greenwood Chamber of Commerce <i>v.</i>	756
Associated Fruit Co. <i>v.</i> A. C. L. R. R. Co	756
Atchison, T. & S. F. Ry. Co., Norfolk Light & Fuel Co. <i>v.</i>	756
Atlantic Cost Line R. R. Co.:	
Associated Fruit Co. <i>v.</i>	756
Georgia Cantaloupe Exchange <i>v.</i>	756
Baltimore & O. R. R. Co.:	
Du Pont de Nemours & Co. <i>v.</i>	757
Indianapolis Board of Trade <i>v.</i>	756
Board of Trade of Indianapolis, Ind., <i>v.</i> B. & O. R. R. Co.	756
Chamber of Commerce of Greenwood, Miss., <i>v.</i> A. & V. Ry. Co.	756
Chicago & N. W. Ry. Co., Thilmany Pulp & Paper Co. <i>v.</i>	756
Clyde S. S. Co., Zaring & Co. <i>v.</i>	756
Coal from Illinois to the Northwest	755
Cotton Linters from Louisiana to New Orleans, La.	755
Cottonseed Products from Texas to Kansas and Missouri	755
Director General, as Agent:	
Sioux City Brick & Tile Co. <i>v.</i>	756
Texas Freight Traffic Asso. <i>v.</i>	756
Du Pont de Nemours & Co. <i>v.</i> B. & O. R. R. Co.	757
Freight Traffic Asso. of Texas <i>v.</i> Director General, as Agent	756
Fruits, Tropical, from New Orleans, La., Mobile, Ala., etc., to Mississippi Valley	755
Georgia Cantaloupe Exchange <i>v.</i> A. C. L. R. R. Co.	756
Graham Paper Co. <i>v.</i> T. & N. O. R. R. Co.	756
Great N. Ry. Co.:	
Parkersburg Rig & Reel Co. <i>v.</i>	756
Wenatchee District Co-Operative Asso. <i>v.</i>	757
Greenwood Chamber of Commerce <i>v.</i> A. & V. Ry. Co.	756
Hamlin (Inc.) <i>v.</i> P. R. R. Co.	756
Heinz, Receiver of Key Coal Co. <i>v.</i> S. Ry. Co.	756
Indianapolis Board of Trade <i>v.</i> B. & O. R. R. Co.	756
Key Coal Co. <i>v.</i> S. Ry. Co.	756
Linters, Cotton, from Louisiana to New Orleans, La.	755
Los Angeles Pressed Brick Co. <i>v.</i> P. E. Ry. Co.	756
Louisiana & A. Ry. Co., United Central Oil Corp. <i>v.</i>	757
Louisville & N. R. R. Co., Peaslee-Gaulbert Co. of Georgia <i>v.</i>	756
Lumber from Mississippi Valley to Slidell, La.	755
Lumber, Transit at Ohio River Crossings and Related Points	755
Minimum Weight on Rice from, to and between Southern Points	755

	Page
Norfolk Light & Fuel Co. <i>v.</i> A., T. & S. F. Ry. Co.....	756
Pacific Electric Ry. Co., Los Angeles Pressed Brick Co. <i>v.</i>	756
Parkersburg Rig & Reel Co. <i>v.</i> G. N. Ry. Co.....	756
Peaslee-Gaulbert Co. of Georgia <i>v.</i> L. & N. R. R. Co.....	756
Pennsylvania R. R. Co., Hamlin (Inc.) <i>v.</i>	756
Petroleum and Products from Oklahoma to Kansas and Missouri.....	755
Rice from Mississippi Valley to Southeastern and Carolina Territories.....	755
Rice, Minimum Weight, between Points in Southern Territory.....	755
Shells from Mississippi River Group Points to Colorado.....	755
Sioux City Brick & Tile Co. <i>v.</i> Director General, as Agent.....	756
Southern Ry. Co., Heinzie, Receiver of Key Coal Co. <i>v.</i>	756
Texas & N. O. R. R. Co., Graham Paper Co. <i>v.</i>	756
Texas Freight Traffic Asso. <i>v.</i> Director General, as Agent.....	756
Thilmany Pulp & Paper Co. <i>v.</i> C. & N. W. Ry. Co.....	756
Tropical Fruits from New Orleans, La., Mobile, Ala., etc., to Mississippi Valley.....	755
United Central Oil Corp. <i>v.</i> L. & A. Ry. Co.....	757
Wenatchee District Co-Operative Asso. <i>v.</i> G. N. Ry. Co.....	757
Zaring & Co. <i>v.</i> C. S. S. Co.....	756

REPARATION GRANTED UNDER SUPPLEMENTAL ORDERS OF THE COMMISSION DURING TIME COVERED BY THIS VOLUME

8406 and 8406 (Sub-Nos. 13, 14, 15, 16, 17, 18, 19, 24, 25, 26, 27, and 28). JONES & LAUGHLIN STEEL CO. *v.* P. & L. E. R. R. CO.; CARNEGIE STEEL CO. *v.* M. C. R. R. CO.; CARNEGIE STEEL CO. *v.* U. R. R. CO.; UNIVERSAL PORTLAND CEMENT CO. *v.* SAME; SAME *v.* S. B. RY. CO. December 8, 1924. Reparation for \$353,165.20, on shipments between interstate points, on account of unreasonable charges.

8406 and 8406 (Sub-No. 30). BINNS *v.* P. & L. E. R. R. CO. December 8, 1924. Reparation for \$430.26, on shipments between interstate points, on account of unreasonable charges.

10929. PITTSBURGH GRAIN & HAY EXCH. *v.* DIRECTOR GENERAL. December 8, 1924. Reparation for \$6,622, on shipments of grain held at Pittsburgh, Pa., for inspection and grading, on account of unjust, unreasonable, and unduly prejudicial charges.

12003. BURLINGTON SHIPPERS' ASSO. *v.* DIRECTOR GENERAL. December 8, 1924. Reparation for \$76.38, on shipments of oil from various points of origin to Burlington, Iowa, on account of unreasonable and unduly prejudicial rates.

12138. PARKERSBURG RIG & REEL CO. *v.* M., K. & T. RY. CO. December 8, 1924. Reparation for \$3,548.75, on shipments of staves and heading from De Leon and Ranger, Tex., and Tulsa, Okla., to Bowling Green and Winchester, Ky., on account of overcharges.

12267. LANCASTER STEEL PRODUCTS CORP. *v.* DIRECTOR GENERAL. December 8, 1924. Reparation for \$3,043.53, on shipments of rods from Canton and Youngstown, Ohio, to Lancaster, Pa., and wire and steel from Lancaster to Harrison, N. J., on account of inapplicable and unreasonable rates.

12290. MIDLAND LINSEED PRODUCTS CO. *v.* DIRECTOR GENERAL. December 8, 1924. Reparation for \$483.28, on shipments of linseed oil meal from Undercliff, N. J., to Chicago, Ill., on account of unreasonable rates.

12333. STANDARD OIL CO. *v.* DIRECTOR GENERAL. December 8, 1924. Reparation for \$576.23, on shipments of gasoline from points in Texas and Oklahoma to Brawley and Calipatria, Calif., and from Greybull, Wyo., to Klamath Falls, Oreg., on account of overcharges.

12365. OKLAHOMA IRON WORKS *v.* DIRECTOR GENERAL. December 8, 1924. Reparation for \$6,387.82, on shipments of steel billets from Pittsburgh, Pa., to Tulsa and Muskogee, Okla., on account of unreasonable rates.

12480. DAVISON & NAMACK FOUNDRY CO. *v.* P. R. R. CO. December 8, 1924. Reparation for \$669.66, on shipments of gravel and sand from Millville, N. J., to Ballston Spa, N. Y., on account of unreasonable rates.

12536. AUTOMOBILE GASOLINE CO. *v.* DIRECTOR GENERAL. December 8, 1924. Reparation for \$2,830.30, on shipments of petroleum and its products from Roxana, Ill., to St. Louis, Mo., on account of unreasonable rates.

12942. DIAMOND MATCH CO. *v.* DIRECTOR GENERAL. December 8, 1924. Reparation for \$826.81, on shipments of muriate of potash from Wilmington, Calif., to Bay City, Mich., and Niagara Falls, N. Y., on account of unreasonable rates.

13023. AMERICAN WOOLEN CO. *v.* DIRECTOR GENERAL. December 8, 1924. Reparation for \$3,375.25, on shipments of oil from Chelsea, Mass., to Lawrence and Lowell, Mass., on account of unreasonable rates.

13239. SWIFT & CO. *v.* DIRECTOR GENERAL. December 8, 1924. Reparation for \$8,369.57, for ice and salt, furnished at points in central territory, on shipments of dressed poultry, butter, eggs, and cheese, on account of illegal charges.

13296 and 13296 (Sub-Nos. 1 and 2). LEHIGH PORTLAND CEMENT CO. *v.* DIRECTOR GENERAL. December 8, 1924. Reparation for \$393.10, on shipments of cement from Ormrod and Chapman, Pa., to Miami, Fla., and from West Coplay, Pa., and Chapman to St. Augustine, Fla., and from Fordwick, Va., to Miami, on account of overcharges.

13360 and 13360 (Sub-No. 1). MOLINE OIL CO. *v.* DIRECTOR GENERAL; SAME *v.* A., T. & S. F. RY. CO. December 8, 1924. Reparation for \$1,093.88, on shipments of oil from Oklahoma Group 3 points to Moline, Ill., on account of unreasonable rates.

13462. AUNT JEMIMA MILLS CO. *v.* DIRECTOR GENERAL. December 8, 1924. Reparation for \$4,374.96, on shipments of pancake flour from St. Joseph, Mo., to Helena, Butte, and Great Falls, Mont., and Spokane, Tacoma, Seattle, and Wenatchee, Wash., on account of unreasonable rates.

13642. INTERNATIONAL PULP CO. *v.* DIRECTOR GENERAL. December 8, 1924. Reparation for \$118.71, on shipments of talc from York Siding, N. Y., to Hailesboro, N. Y., on account of unreasonable rates.

13652. CLEVELAND & SONS *v.* B., S. L. & W. RY. CO. December 8, 1924. Reparation for \$9,169.01, on shipments of sugar from New Orleans and related points to Houston and Beaumont, Tex., on account of unreasonable rates.

13799. TRANSCONTINENTAL OIL CO. *v.* M., K. & T. RY. CO. December 8, 1924. Reparation for \$61,089.68, on shipments of petroleum oils from Fort Worth and Hodge, Tex., to Boynton, Eram, Delaware, and Watova, Okla., on account of unreasonable rates.

13830. BY-PRODUCTS COKE CORP. *v.* DIRECTOR GENERAL. December 8, 1924. Reparation for \$219.04, on shipments of tar from South Chicago, Ill., to Solvay, N. Y., on account of unreasonable charges.

13899. DIXIE PORTLAND CEMENT CO. *v.* N., C. & ST. L. RY. December 8, 1924. Reparation for \$1,247.66, on shipments of coal from mines in the Bon Air, Tenn., group to Richard City, Tenn., on account of unreasonable rates.

13936. RICHARDSON SAND CO. *v.* DIRECTOR GENERAL. December 8, 1924. Reparation for \$1,253.32, on shipments of sand and gravel from Carpentersville, Ill., to Edison Park and Park Ridge, Ill., on account of illegal charges.

13978. DU PONT DE NEMOURS & CO. *v.* DIRECTOR GENERAL. December 8, 1924. Reparation for \$1,934.93, on shipments of wood flour from Hercules, Calif., to Louviers, Colo., on account of unreasonable rates.

14216 and 14295. BARRETT CO. *v.* DIRECTOR GENERAL. December 8, 1924. Reparation for \$1,496, on shipments of tar from Harriet and Solvay, N. Y., to Everett, Mass., and from Solvay, N. Y., to Syracuse, N. Y., on account of unreasonable rates.

14232. CAMBRIA STEEL CO. *v.* DIRECTOR GENERAL. December 8, 1924. Reparation for \$227.89, on shipments of stone from Shreiners, Pa., to Johnstown, Pa., on account of unreasonable rates.

14247 and 14247 (Sub-No. 1). WADHAMS OIL CO. *v.* C. & N. W. RY. CO.; and O'NEIL OIL & PAINT CO. *v.* SAME. December 8, 1924. Reparation for \$5,939.62, on shipments of petroleum and its products from points in Kansas and Oklahoma to Milwaukee, Wis., on account of unreasonable rates.

14328. CROWN WILAMETTE PAPER Co. *v.* DIRECTOR GENERAL. December 8, 1924. Reparation for \$505.54, on shipments of sulphate of alumina from Nichols, Calif., to Portland and Lebanon, Oreg., on account of unreasonable rates.

14388. MOLINE ICE Co. *v.* DIRECTOR GENERAL. December 8, 1924. Reparation for \$532.35, on shipments of ice from Ashland, Wis., to East Moline, Ill., on account of unreasonable rates.

14417. PRAIRIE OIL & GAS Co. *v.* A., T. & S. F. RY. Co. December 8, 1924. Reparation for \$8,106.72, on shipments of oil-well supplies from Pittsburgh, Pa., and other points to Drumwright and Oilton, Okla., on account of unreasonable rates.

14432. TROJAN POWDER Co. *v.* DIRECTOR GENERAL. December 8, 1924. Reparation for \$356.90, on shipments of nitrostarch from San Francisco, Calif., to Robert, Calif., on account of unreasonable rates.

14472 and 14450. DOLESE BROS. Co. *v.* A., T. & S. F. RY. Co.; and SCHEIDENHELM Co. *v.* C., R. I. & P. RY. Co. December 8, 1924. Reparation for \$4,718.73, on shipments of stone from Buffalo, Iowa, to Whitton, Green River, Geneseo, and Sheffield, Ill., on account of unreasonable rates.

14515. SALT LAKE POTASH Co. *v.* A. C. L. R. R. Co. December 8, 1924. Reparation for \$1,073.24, on shipments of sulphate of potash from Kosmo, Utah, to Shreveport, La., Brundige, Ala., Meigs, Ga., and Gulfport, Miss., on account of unreasonable rates.

14722. LEE MERCANTILE Co. *v.* DIRECTOR GENERAL. December 8, 1924. Reparation for \$1,070.55, on shipments of cotton-piece goods from New York, N. Y., and Boston, Mass., rate points to Kansas City, Mo., on account of unreasonable rates.

14939. INDIANA BOARD & FILLER Co. *v.* WABASH RY. Co. December 8, 1924. Reparation for \$418.24, on shipments of straw from Ivesdale, Bement, Hammond, and Cushman, Ill., to Marion, Ind., on account of unreasonable rates.

14985. AMERICAN PAPER PRODUCTS Co. *v.* A., T. & S. F. RY. Co. December 8, 1924. Reparation for \$136.68, on shipments of strawboard and fiber boxes from Carthage, Ind., to Sapulpa, Okla., on account of unreasonable rates.

14987. WESTON DODSON & Co. *v.* N. Y., O. & W. RY. Co. December 8, 1924. Reparation for \$1,183.58, on shipments of coal from Winton, Pa., to North Adams, Mass., on account of unreasonable rates.

15204. ATHLETIC MINING & SMELTING Co. *v.* A. C. R. R. Co. December 8, 1924. Reparation for \$1,314.62, on shipments of coal and slack from Huntington and Midland, Ark., to South Fort Smith, Ark., on account of unreasonable rates.

NOTE.—The amount of reparation awarded in the above cases aggregates \$498,379.99.

93 I. C. C.

ORDERS ISSUED INVOLVING REPARATION IN INFORMAL PLEADINGS FOR THE YEAR ENDED OCTOBER 31, 1924

For the year ended October 31, 1924, the number of orders issued involving reparation in informal pleadings was 5,823; the number of claims denied or otherwise closed during that period was 431; and the amount of reparation awarded was \$1,557,848.82.

93 I. C. C.

763

TABLE OF COMMODITIES

[The numbers in parentheses following citations indicate where commodity is considered.]

- ANGLES. Haynesville and Couchwood, La., to El Dorado and Smackover, Ark., 667.
- ANGLES, STEEL. Boulder, Colo., to Wilmington (Los Angeles Harbor), Calif. Diversion, 417.
- ARCTICS, RUBBER. Seattle, Wash., to Omaha, Nebr., 243.
- ASSES. Kansas City, Mo., to Louisiana and Texas, 479 (492).
- AUTOMOBILES. Jackson, Miss., from central territory. Class and commodity rates, 339 (340).
- BAGGING. Jackson, Miss., from central territory. Class and commodity rates, 339 (340).
- BAGS, CEMENT, EMPTY RETURNED. Ada, Okla., from Texas, 605.
- BAGS, WOVEN PAPER FABRIC. Cleveland, Ohio, to San Francisco and Los Angeles, Calif., 694.
- BALLS, GRINDING, STEEL. Chrome, N. J., to Ada, Okla., 203.
- BARS. Haynesville and Couchwood, La., to El Dorado and Smackover, Ark., 667.
- BEAMS. Haynesville and Couchwood, La., to El Dorado and Smackover, Ark., 667.
- BEANS, DRIED. Jackson, Miss., from central territory. Class and commodity rates, 339 (340).
- BEEF, SLICED DRIED. Official classification territory. Rating, 400.
- BICYCLES:
Middletown, Ohio, to Los Angeles, Calif., 689.
San Francisco and Oakland, Calif., from Westfield, Mass., Little Falls, N. Y., and Middletown, Ohio, 697.
- BILLETS, STEEL. Huntington, W. Va., from South Kearney, N. J., Canton (Baltimore), Md., and Philadelphia, Pa., 216.
- BLOCKS, FURNACE AND TANK. Tallapoosa, Ga., to Alton Park, Tenn., 71.
- BOILERS. Chattanooga, Tenn., to Belhaven, N. C., 1.
- BOLTS. Haynesville and Couchwood, La., to El Dorado and Smackover, Ark., 667.
- BOTTLES, GLASS. Chattanooga, Tenn., to Memphis, Tenn., 317.
- BOXES, CORRUGATED. Nashville, Tenn., to Houston, Tex., 65.
- BOXES, FIBERBOARD, PAPER, PULPBOARD, AND STRAWBOARD. Nashville and Chattanooga, Tenn., Atlanta, Ga., and Birmingham, Ala., to southeastern and south Atlantic coast points, 559.
- BOXES, WOODEN, EMPTY. Kansas City, Mo., to Carl Junction, Mo., 665.
- BOX MATERIAL, WIRE-BOUND:
Clarksburg, W. Va. Transit arrangements, 207.
West Virginia to interstate destinations via Clarksburg, W. Va., 207.
- BRACKETS, POLE. Emeryville, Calif., to Iowa, Missouri, Arkansas, Nebraska, Kansas, Oklahoma, Texas, Colorado, and New Mexico, 282.

BRAN, RICE. Wheatley, Ark., to Jackson and Meridian, Miss., 322.

BRASS, SCRAP. Binghamton, N. Y., to Philadelphia, Pa., 344.

BRICK:

Arkansas and Oklahoma to and from Arkansas and Oklahoma, 210.

Iowa to Minnesota, Wisconsin, and Nebraska, 81.

Oklahoma and Texas to and from Oklahoma and Texas, 210.

BURROS. Kansas City, Mo., to Louisiana and Texas, 479 (492).

BUTTER, CORN SIRUP AND SUGAR COMBINED, FRUIT, PEANUT, AND SUGAR. Official classification territory. Rating, 400.

CABBAGE. Topeka, Kans., from East Grand Forks, Minn., 241.

CAMERAS. St. Louis, Mo., to San Francisco, Calif., for export, 61.

CANNED GOODS. Jackson, Miss., from central territory. Class and commodity rates, 339 (340).

CANTALOUPE. Turlock, Calif., to New York, N. Y., and Boston, Mass. Express, 76.

CAR PARTS. McKees Rock and Allegheny, Pa., to various points, 224.

CARBOYS, ACID, RETURNED EMPTY. Western trunk-line territory, 672.

CARS, NEW AND REPAIR. McKees Rock and Allegheny, Pa., to various points, 224.

CASTINGS. Haynesville and Couchwood, La., to El Dorado and Smackover, Ark., 667.

CEMENT. South Atlantic and Gulf ports. Handling charges, 640.

CEREAL-FOOD PREPARATIONS. Jackson, Miss., from central territory. Class and commodity rates, 339 (340).

CHATS. Crawford County, Kans., from Joplin, Webb City, and Oronogo, Mo., 502.

CHIMNEYS, LAMP. Jackson, Miss., from central territory. Class and commodity rates, 339 (340).

CLASS AND COMMODITY RATES:

Jackson, Miss., from central territory, 339.

Vicksburg and Natchez, Miss., and Angola, North Baton Rouge, Harahan, and New Orleans, La. Ferry tolls, 462.

CLAY. Langley, S. C., to Neenah, Wis., 591.

CLAY PRODUCTS. Iowa to Minnesota, Wisconsin, and Nebraska, 81.

CLIPPINGS, COTTON-TIE. St. Louis, Mo., to Texas, Louisiana, and Oklahoma, 394 (397).

CLOCKS. St. Louis, Mo., to San Francisco, Calif., for export, 61.

COAL:

McKees Rock and Allegheny, Pa., from various points, 224.

West Virginia to various destinations, 423.

Zeigler, Ill., to Agar, S. Dak., reconsigned to Lake Preston and Miller, S. Dak., 687.

COAL, BITUMINOUS:

Harrisburg, Ill., to LaFayette, Ind., 579.

Ladysmith, Wis., from Illinois and Kentucky, 95.

West Clinton and Latta, Ind., to Marion, Kokomo, Elwood, Michigantown, and Warren, Ind., 183.

West Pullman, Ill., from Mount Olive and Staunton, Ill., 53.

West Virginia to various destinations, 423 (424).

COFFEE, GREEN. New Orleans, La., to Montgomery, Ala., 555.

COKE. Kentucky, Tennessee, and Virginia to Cincinnati, Ohio, group, 572.

COKE, GAS. Segundo, Colo., to Delta, Utah, 551.

COKE, PETROLEUM. Casper, Wyo., to Delta, Utah, 547.

CONTAINERS, BEVERAGE, RETURNED EMPTY. Atlanta, Ga., to Evansville, Ind., and Milwaukee, Wis., 512.

COOKING APPLIANCES, ELECTRICAL. Marion, Ind., to San Francisco, Calif., 541.

CORN:

Mississippi from Texas, Oklahoma, Kansas, Nebraska, Colorado, Iowa, Minnesota, Indiana, Illinois, and Missouri. Reshipping rates, 435 (436).

South Dakota to Montana, Idaho, Washington, and Oregon via Aberdeen, S. Dak., 411.

CORN, POP. Arthur, Iowa, to Chicago, Ill., 587.

CORES, PAPER-WINDING. Kansas City, Mo., to Wisconsin Rapids (Grand Rapids), Wis., 607.

COTTON:

Blythe, Calif., to Galveston, Tex., transited at Ballinger, Tex., 260.

Oklahoma to trunk line and New England territories and Canada via Texas ports. Rail-and-water, and rail-water-and-rail rates, 268.

COTTON PIECE GOODS. St. Louis, Mo., from Texas, Louisiana and Oklahoma, 394.

COTTON, UNCOMPRESSED. Cairo, Brookport, Gale, and Thebes, Ill., to eastern destinations, 453.

CRATES, POULTRY. Dyer, Tenn., to Cincinnati, Ohio, 386.

CREAM. Omaha, Nebr., from Albion and Dallas Center, Iowa. Express rates, 684.

CUCUMBERS. Blytheville, Ark., to Omaha, Nebr., 251.

CUTLERY. St. Louis, Mo., to San Francisco, Calif., for export, 61.

DISKS, SOAPSTONE. Schuyler and Tye River, Va., to Toledo, Ohio, and Muncie, Ind., 271.

DRUGS. Norwich, N. Y., to New York, N. Y., 246.

FANS, PAPER. St. Louis, Mo., to San Francisco, Calif., for export, 61.

FERTILIZER AND FERTILIZER MATERIALS:

Atlantic and Gulf ports. Wharfage and handling charges, 609.

South Atlantic and Gulf ports. Handling charges, 640.

FILES, STEEL, OLD AND WORN OUT. Anderson, Ind., from official, southern, and western classification territories, 373.

FISH, COOKED, PICKLED, AND PRESERVED. Official classification territory. Rating, 400.

FITTINGS, PIPE, IRON. Barberton, Ohio, to Duluth, Minn., destined to Virginia, Minn., 79.

FIXTURES, BOILER. Chattanooga, Tenn., to Belhaven, N. C., 1.

FLOORING, BRIDGE, OAK. Lonoke, Ark., to Nowata, Okla., 301.

FLUORSPAR, GROUND. Newell, Pa., to Camden, N. J., 193.

FOREST PRODUCTS:

Christie & Eastern Railway Company. Divisions, 675.

Ohio and Mississippi River crossings, and Chicago, Ill., to central and western trunk-line territories, 279.

FORMS, SHIRT, COTTON. Baltimore, Md., to Washington, N. C., 388.

FRAMES, CHAIR AND LOUNGE, WOODEN. Official, southern, and western classification territories, 506.

FRUIT, CANNED, CRUSHED, AND PRESERVED. Official classification territory. Rating, 400.

FRUITS. Jackson, Miss., from central territory. Class and commodity rates, 339 (340).

FUEL, RAILWAY. Car distribution, 701.

FURNITURE:

Fort Smith, Ark., to Jackson, Miss., 55.

Jackson, Miss., from central territory. Class and commodity rates, 339 (340).

GASOLINE:

Salt Lake City, Utah, to Baker, Oreg., 278.

Tulsa, Okla., to Clayton, N. Mex., via Pueblo, Colo., 691.

GLASS. Jackson, Miss., from central territory. Class and commodity rates 339 (340).

GLASSWARE. Jackson, Miss., from central territory. Class and commodity rates, 339 (340).

GLASS, WINDOW. Jackson, Miss., from central territory. Class and commodity rates, 339 (340).

GRAIN:

Bangor, Pa., from West and South transited and reshipped to trunk-line and New England territories, 129.

Galveston and Texas City, Tex., from Missouri, Iowa, Minnesota, Nebraska, Kansas, Colorado, and Oklahoma for export, 124.

Minneapolis, Minn. Absorption of switching, 151.

Mississippi from Texas, Oklahoma, Kansas, Nebraska, Colorado, Iowa, Minnesota, Indiana, Illinois, and Missouri. Reshipping rates, 435.

Terre Haute, Ind. Switching, 256.

GRAIN PRODUCTS:

Bangor, Pa., from West and South transited and reshipped to trunk-line and New England territories, 129.

Mississippi from Texas, Oklahoma, Kansas, Nebraska, Colorado, Iowa, Minnesota, Indiana, Illinois, and Missouri. Reshipping rates, 435.

Terre Haute, Ind. Switching, 256.

GRANITE. Southeastern territory. Released rates, 90.

GRANITE, DECOMPOSED. Pacoima, Calif., to East San Pedro, Calif., 337.

GRAPEFRUIT:

Jacksonville, Fla., to Billings, Great Falls, and Helena, Mont., 174.

Omaha, Nebr., from Haines City, Winter Haven, Arcadia, and Palmetto, Fla., 583.

GRAVEL:

Detroit, Minn., to Lake Park, Minn. Estimated weights, 368.

Winona, Minn., to Viroqua, Wis., 99.

HAY, ALFALFA. Texas from Pecos and Mesilla Valleys, New Mexico. Minimum weight, 43.

HEADINGS, GUM AND OAK, ROUGH. Bonita, La., to Louisville, Ky., 593.

HEATERS AND HEATING APPLIANCES, ELECTRICAL. Marion, Ind., to San Francisco, Calif., 541.

HONEY, COMB AND STRAINED. Official classification territory. Rating, 400.

HORSES:

Atlanta, Ga., from various points, 325.

Fort Worth, Tex., to and from southwestern and western territories, 479.

Kansas City, Mo., to Louisiana and Texas, 479 (492).

Texas to and from Louisiana, Arkansas, Oklahoma, Kansas, Missouri, Iowa, Illinois, Nebraska, Wyoming, Colorado, New Mexico, Arizona, California, Memphis, Tenn., and Vicksburg and Natchez, Miss., 479.

Wichita, Kans., to Arkansas, Louisiana, Texas and Memphis, Tenn., 479 (490).

- IMPLEMENTS, AGRICULTURAL.** Jackson, Miss., from central territory. Class and commodity rates, 339 (340).
- INSULATORS.** Emeryville, Calif., to Iowa, Missouri, Arkansas, Nebraska, Kansas, Oklahoma, Texas, Colorado and New Mexico, 282.
- INSULATORS, POTTERY.** Jackson, Miss., from central territory. Class and commodity rates, 339 (340).
- INSULATORS, POTTERY, COMMON.** East Liverpool, Ohio, to Jackson, Miss., 342.
- IRON.** McKees Rock and Allegheny, Pa., from various points, 224.
- IRON ARTICLES:**
 Newark, N. J., to New England points, 499.
 Niles, Ohio, to Mexia, Tex., 285.
 San Francisco, Calif. Demurrage and storage charges, 235.
- IRON, BAR.** Newark, N. J., to New England points, 499.
- IRON, SCRAP:**
 Newark, N. J., to New England points, 499.
 St. Louis, Mo., to Texas, Louisiana and Oklahoma, 394.
- IRON, SHEET.** Niles, Ohio, to Mexia, Tex., 285.
- JAM, FRUIT.** Official classification territory. Rating, 400.
- JELLY, CORN SIRUP AND FRUIT.** Official classification territory. Rating, 400.
- JUGS, EARTHENWARE, INSULATED AND METAL JACKETED.** Macomb, Ill., to Dallas, Tex., 354.
- JUNK:**
 St. Louis, Mo., to Texas, Louisiana and Oklahoma, 394.
 Western trunk-line territory. Minimum weight, 263.
- KEROSENE:**
 New Orleans, La. Wharfage and handling charges, 609.
 Tulsa, Okla., to Clayton, N. Mex., via Pueblo, Colo., 691.
- KITCHENETTES, ELECTRIC.** Marion, Ind., to San Francisco, Calif., 541.
- KNAPSACKS.** New York, N. Y., to Binghamton, N. Y., 103.
- LATH.** Big Fork, Minn., to Horicon, Wis., 275.
- LEATHER, IMITATION.** Oakland (Melrose), Calif., from Fairfield, Conn., and Newburgh, N. Y., 544.
- LIME.** Pennsylvania, Ohio, and West Virginia from Pennsylvania, West Virginia, Maryland, Virginia, New Jersey, New York, and Vermont, 617.
- LIMESTONE, GROUND.** Barber, Va., to Greensboro, N. C., 186.
- LINTERS, COTTON, UNCOMPRESSED.** Cairo, Brookport, Gale, and Thebes, Ill., to eastern destinations, 453.
- LINT, MUNITION.** Des Moines and Dubuque, Iowa, from Brownsville, Bellville, and La Grange, Tex., 681.
- LIVESTOCK:**
 Central territory to and from central territory, 458.
 Oregon, Idaho, Washington, Utah, and Montana to and from Oregon, Idaho, Washington, Utah, and Montana, 304.
- LUMBER:**
 Big Fork, Minn., to Horicon, Wis., 275.
 Christie & Eastern Railway Co. Divisions, 675.
 Demopolis, Ala., to Louisville, Ky., reconsigned to Bluefield, W. Va. Transportation, demurrage, and penalty charges, 58.
 Lonoke, Ark., to Nowata, Okla., 301.
 McKees Rock and Allegheny, Pa., from various points, 224.
 Mississippi Valley and southeastern points to Ohio and Mississippi River crossings, destined beyond. Combination rates, 614.
 New York Harbor points. Storage and demurrage, 288.

LUMBER—Continued.

Ohio and Mississippi River crossings, and Chicago, Ill., to central and western trunk-line territories, 279.

Omar, Christian, and Logan, W. Va., to central territory and Canada, 363.

LUMBER, CEDAR. North Pacific coast points to southern points, 501.

LUMBER, YELLOW-PINE:

Cleveland, Ohio. Demurrage, 661.

Tupelo, Miss., to Memphis, Tenn., 73.

MACHINERY. McKees Rock and Allegheny, Pa., from various points, 224.

MANURE, STABLE. Jersey City, N. J., to New Jersey, Pennsylvania, Delaware, Maryland, and Virginia, 349.

MARBLE. Southeastern territory. Released rates, 90.

MARBLE, CRUSHED. Los Angeles, Calif., to Fort Bliss, Tex., 447.

MEATS, CANNED. Atlanta, Ga., to Chicago, Ill., 360.

MEDICINES. Norwich, N. Y., to New York, N. Y., 246.

MELONS. California to Tacoma and Seattle, Wash., and Oregon, 50.

MINCMEAT. Official classification territory. Rating, 400.

MIXTURES, HONEY AND SUGAR. Official classification territory. Rating, 400.

MONUMENTS, GRANITE. Northfield, Vt., to Anderson, Ind., 309.

MULES:

Atlanta, Ga., from various points, 325.

Fort Worth, Tex., to and from southwestern and western territories, 479.

Kansas City, Mo., to Louisiana and Texas, 479 (492).

Texas to and from Louisiana, Arkansas, Oklahoma, Kansas, Missouri, Iowa, Illinois, Nebraska, Wyoming, Colorado, New Mexico, Arizona, California, Memphis, Tenn., and Vicksburg and Natchez, Miss., 479.

Wichita, Kans., to Arkansas, Louisiana, Texas, and Memphis, Tenn., 479 (490).

NAILS. Texas, Oklahoma, and New Mexico from St. Louis, Mo., Shreveport, La., and other defined territories, 31.

NAPHTHA, SOLVENT. Minnequa, Colo., to Johannesburg, Calif., 197.

NAPKINS, PAPER. San Antonio, Tex., from Little Falls, Minn., and Port Edwards, Nekoosa, Rhinelander, and Green Bay, Wis., 352.

NOTIONS. St. Louis, Mo., to San Francisco, Calif., for export, 61.

NURSERY STOCK. Express rating, 166.

NUTS. Haynesville and Couchwood, La., to El Dorado and Smackover, Ark., 667.

OATS. Mississippi from Texas, Oklahoma, Kansas, Nebraska, Colorado, Iowa, Minnesota, Indiana, Illinois, and Missouri. Reshipping rates, 435 (436).

OIL, CRUDE. Gainesville, Tex., to Miami, Ariz., 221.

OIL, FUEL:

East Braintree, Mass., to New England, 110.

Gainesville, Tex., to Miami, Ariz., 221.

OIL, FUEL, PETROLEUM. Loftus, Calif., to Bisbee, Ariz., 357.

OIL, LINSEED. San Francisco, Calif., to Los Angeles, Calif., 154.

OIL, OLIVE. Official classification territory. Rating, 400.

OIL, PETROLEUM. Bayonne, N. J., to Brooklyn, N. Y., 539.

OLIVES. Official classification territory. Rating, 400.

ORANGES:

California to Virginia, Minn., 596.

Grand Bay, Irvington, Bay Minette, Loxley, Silver Hill, and Foley, Ala., to central and western territories, 432.

ORANGES—Continued.

Jacksonville, Fla., to Billings, Great Falls, and Helena, Mont., 174.

Omaha, Nebr., from Haines City, Winter Haven, Arcadia, and Palmetto, Fla., 583.

ORE, IRON, GROUND. Neda, Wis., to various destinations, 427.

ORE, ZINC. South Fort Smith, Ark., from Missouri, Kansas, and Oklahoma, 119.

OVENS, ELECTRIC. Marion, Ind., to San Francisco, Calif., 541.

PACKAGES, BEER, EMPTY. La Crosse, Wis., from West Virginia, Virginia, New York, Pennsylvania, Ohio, Kentucky, Indiana, Michigan, and Washington, D. C., 602.

PAPER, NEWSPRINT:

McAlester, Okla., from Port Edwards and Ladysmith, Wis., International Falls, Minn., and Alexandria, Ind., 161.

San Antonio, Tex., from Little Falls, Minn., and Port Edwards, Nekoosa, Rhinelander, and Green Bay, Wis., 352.

Sault Ste. Marie, Ontario, Canada, to St. Joseph, Mo., 381.

PAPER, SCRAP. Chattanooga, Tenn., from Atlanta, Inman yards, and Marietta, Ga., 147.

PAPER, TOILET. Green Bay, Wis., to Muskogee, Okla., 205.

PAPER, WRAPPING:

International Falls, Minn., to Chicago, Ill., 139.

San Antonio, Tex., from Little Falls, Minn., and Port Edwards, Nekoosa, Rhinelander, and Green Bay, Wis., 352.

PEACHES:

Fort Valley, Ga., to Watuppa, Mass., 328.

Georgia, Alabama, and Chattanooga, Tenn., to trunk-line, New England, and Buffalo-Pittsburgh territories, and Canada, 534.

PEANUTS, SHELLED. San Francisco, Calif., to Wilmington, N. C., 237.

PEBBLES, FLINT. New Orleans, La., to Dewey, Okla., 311.

PETROLEUM. East Braintree, Mass., to New England, 110.

PETROLEUM, CRUDE. Blue Island, Ill., from Irvine and Beattyville, Ky., 85.

PETROLEUM PRODUCTS. East Braintree, Mass., to New England, 110.

PICKLES. Official classification territory. Rating, 400.

PINS, CROSS-ARM. Emeryville, Calif., to Iowa, Missouri, Arkansas, Nebraska, Kansas, Oklahoma, Texas, Colorado, and New Mexico, 282.

PIPE, SEWER. Atlantic and Gulf ports. Wharfage and handling charges, 609.

PIPE, SEWER, CONCRETE. Knoxville, Tenn., to South Carolina, 179.

PIPE, COIL, CAST-IRON. Somerville, N. J., to North River, Manhattan Island, N. Y., 39.

PLASTER. Jackson, Miss., from central territory. Class and commodity rates, 339 (340).

PLASTER, CEMENT. Pyramid and Sweetwater, Tex., to Arkansas, Louisiana, Missouri, and Illinois, 315.

PLATES, HOT, ELECTRIC. Marion, Ind., to San Francisco, Calif., 541.

PLATES, STEEL:

Alliance, Ohio, to Ranger, Tex., reconsigned to Baytown, Tex., 331.

Claymont, Del., to Lancaster, Steelton, York, Warren, and Oil City, Pa., 37.

Haynesville and Couchwood, La., to El Dorado and Smackover, Ark., 667.

Niles, Ohio, to Mexia, Tex., 285.

POTATOES. Sears, Mich., to Norton, Va. Misrouting, 69.

POWDER, BLASTING, BLACK. Fairchance and Evans, Pa., and Rita, W. Va., to various destinations, 451.

PREMIUM ARTICLES. St. Louis, Mo., to San Francisco, Calif., for export, 61.

- PRESERVES, FRUIT.** Official classification territory. Rating, 400.
- PULP, FRUIT.** Official classification territory. Rating, 400.
- PULP, KRAFT.** International Falls, Minn., to central territory, 105.
- PULP, WOOD, WET.** International Falls, Minn., to central territory, 105.
- RADIATORS, ELECTRIC.** Marion, Ind., to San Francisco, Calif., 541.
- RAGS, OLD.** New York, N. Y., to Binghamton, N. Y., 103.
- RAILS, STEEL.** Boulder, Colo., to Wilmington (Los Angeles Harbor), Calif. Diversion, 417.
- RANGES, ELECTRIC.** Marion, Ind., to San Francisco, Calif., 541.
- REGINS, COTTON, UNCOMPRESSED.** Cairo, Brookport, Gale, and Thebes, Ill., to eastern destinations, 453.
- RICE, CLEAN.** Stuttgart, De Witt, Lonoke, Carlisle, and Wheatley, Ark., to official, southern, and western territories, 517.
- RODS, STEEL.** Mansfield, Mass., from Pittsburgh and Johnstown, Pa., and Buffalo, N. Y., 171.
- ROOFING MATERIAL.** Jackson, Miss., from central territory. Class and commodity rates, 339 (340).
- SACKS, CEMENT, EMPTY RETURNED.** Ada, Okla., from Texas, 605.
- SALT:**
 Jackson, Miss., from central territory. Class and commodity rates, 339 (340).
 South Atlantic and Gulf ports. Handling charges, 640.
- SAND:**
 Turner, Kans., to Bolivar, Cabool, Galloway, and Cassidy, Mo., 346.
 Winona, Minn., to Viroqua, Wis., 99.
- SAUCES, TABLE.** Official classification territory. Rating, 400.
- SEED, SORGHUM.** Kansas City, Mo., to Montgomery, Ala., 67.
- SHEETS, STEEL.** Haynesville and Couchwood, La., to El Dorado and Smackover, Ark., 667.
- SHELLS, MUSSEL.** Oswego, Kans., from Marked Tree, Pochontas, and Clarendon, Ark., 599.
- SHELLS, OYSTER.** Memphis, Tenn., to Missouri and Kansas, 394.
- SHELVES, WARMING.** Marion, Ind., to San Francisco, Calif., 541.
- SHINGLES, CEDAR.** North Pacific coast points to southern points, 501.
- SHRUBS.** Express rating, 166.
- SILVER-PLATED WARE.** St. Louis, Mo., to San Francisco, Calif., for export, 61.
- SISAL.** Indianapolis, Ind., to central territory, New York, and Ontario, Canada, 297.
- SOAP.** Jackson, Miss., from central territory. Class and commodity rates, 339 (340).
- SODA AND SODA PRODUCTS.** Jackson, Miss., from central territory. Class and commodity rates, 339 (340).
- SPICES, GROUND.** Official classification territory. Rating, 400.
- STAPLES, IRON AND STEEL.** Texas, Oklahoma, and New Mexico from St. Louis, Mo., Shreveport, La., and other defined territories, 31.
- STARCH.** Jackson, Miss., from central territory. Class and commodity rates, 339 (340).
- STAVES, GUM AND OAK, ROUGH.** Bonita, La., to Louisville, Ky., 593.
- STEEL.** McKees Rock and Allegheny, Pa., from various points, 224.
- STEEL ARTICLES:**
 Newark, N. J., to New England points, 499.
 Niles, Ohio, to Mexia, Tex., 285.
 San Francisco, Calif. Demurrage and storage charges, 235.

- STONE.** Southeastern territory. Released rates, 90.
- STONE BROKEN.** Crawford County, Kans., from Joplin, Webb City, and Oronogo, Mo., 502.
- STONE, CRUSHED.** Cape Girardeau, Mo., to Bowman, Ark., 370.
- STONEWARE.** Monmouth, Macomb, and Whitehall, Ill., to North Dakota and Montana, 143.
- STOVES, TABLE, ELECTRIC.** Marion, Ind., to San Francisco, Calif., 541.
- STRAWBERRIES:**
 Castleberry, Ala., to Mansfield, Ohio, 699.
 Louisiana to Oklahoma, Kansas, and Missouri. Express rates, 390.
- TANBARK.** Ross Spur (Wild Cat Spur), Wis., to Sheboygan, Wis., 265.
- TANK MATERIAL.** Niles, Ohio, to Mexia, Tex., 285.
- TANK MATERIAL, FABRICATED STEEL.** Haynesville and Couchwood, La., to El Dorado and Smackover, Ark., 667.
- TANKS, STEEL.** Hopewell, Va., to Oklahoma City, Okla., 213.
- TILE, DRAIN.** Knoxville, Tenn., to South Carolina, 179.
- TOASTERS, ELECTRIC.** Marion, Ind., to San Francisco, Calif., 541.
- TOBACCO, PLUG.** St. Louis, Mo., to San Francisco, Calif., for export, 61.
- TRACTORS.** Detroit, Mich., to Mason City, Iowa, 195.
- TREES.** Express rating, 166.
- TRUCKS, CAR.** McKees Rock and Allegheny, Pa., to various points, 224.
- VEGETABLES:**
 California to Tacoma and Seattle, Wash., and Oregon, 50.
 Jackson, Miss., from central territory. Class and commodity rates, 339 (340).
- VEHICLES, FREIGHT, SELF-PROPELLING.** Wichita Falls, Tex., and Oklahoma City, Okla., to Galveston, Tex., and New Orleans, La., for export, 635.
- VINEGAR.** Official classification territory. Rating, 400.
- WATCHES, CLOCK.** St. Louis, Mo., to San Francisco, Calif., for export, 61.
- WHEAT:**
 Atchison, Leavenworth, and Fort Leavenworth, Kans., from Kansas and Colorado, transited at Kansas City, Kans.-Mo., 200.
 Galveston and Texas City, Tex., from Missouri, Iowa, Minnesota, Nebraska, Kansas, Colorado, and Oklahoma for export, 124.
 Great Falls, Mont., from Bridgeport, Dalton, Lorenzo, Gurley, and Sidney, Nebr., 377.
- WIRE.** Texas, Oklahoma, and New Mexico from St. Louis, Mo., Shreveport, La., and other defined territories, 31.
- WOOD, FUEL.** Spokane, Wash., from Atlas, Garwood, Gibbons, and Fox Spur Idaho, 157.
- WOOL IN THE GREASE.** La Porte and Mishawaka, Ind., from Boston and Lowell, Mass., New London, Conn., and New York, N. Y., 26.
- 93 I. C. C.

TABLE OF LOCALITIES

[The numbers in parentheses following citations indicate where locality is considered.]

- Aberdeen, S. Dak., from South Dakota destined to Montana, Idaho, Washington, and Oregon. Corn, 411.
- Ada, Okla., from Chrome, N. J. Steel grinding balls, 203.
- Ada, Okla., from Texas. Empty returned cement bags and sacks, 605.
- Ada, Okla., to trunk-line and New England territories and Canada via Texas ports. Cotton; rail-and-water and rail-water-and-rail rates, 268.
- Agar, S. Dak., from Ziegler, Ill., reconsigned to Lake Preston and Miller, S. Dak. Coal, 687.
- Akron, Ohio, to Jackson, Miss. Class and commodity rates, 339 (340).
- Akron, Ohio, from Omar, Christian, and Logan, W. Va. Lumber, 363 (364).
- Alabama to trunk-line, New England, and Buffalo-Pittsburgh territories, and Canada. Peaches, 534.
- Alabama City, Ala., to San Francisco, Calif., destined to Java. Iron and steel articles, 235.
- Albany, Ga., from Nashville and Chattanooga, Tenn., Birmingham, Ala., and Atlanta, Ga. Paper boxes, 559 (568).
- Albany, Ga., from Stuttgart, De Witt, Lonoke, Carlisle, and Wheatley, Ark. Clean rice, 517 (531).
- Albion, Iowa, to Omaha, Nebr. Cream; express rates, 684.
- Albuquerque, N. Mex., from Emeryville, Calif. Insulators, 282 (284).
- Alexandria, Ind., to McAlester, Okla. Newsprint paper, 161.
- Alexandria, La., to and from Kansas City, Mo. Horses and mules, 479 (493).
- Alexandria, La., to St. Louis, Mo. Junk, 394 (397).
- Alexandria, S. Dak., to Minneapolis, Minn. Grain, 151.
- Allegheny, Pa., to and from various points. Various commodities, 224.
- Alliance, Ohio, to Ranger, Tex., reconsigned to Baytown, Tex. Steel plates, 331.
- Alton Park, Tenn., from Tallapoosa, Ga. Tank and furnace blocks, 71.
- Altus, Okla., from Louisiana. Strawberries; express rates, 390.
- Amarillo, Tex., to and from Missouri. Horses and mules, 479 (488, 493).
- Americus, Ga., from Nashville and Chattanooga, Tenn., Birmingham, Ala., and Atlanta, Ga. Paper boxes, 559 (568).
- Americus, Ga., to trunk-line, New England, and Buffalo-Pittsburgh territories, and Canada. Peaches, 534 (535).
- Anderson, Ind., from Northfield, Vt. Granite monuments, 309.
- Anderson, Ind., from official, southern, and western classification territories. Used files, 373.
- Anderson, S. C., from Stuttgart, De Witt, Lonoke, Carlisle, and Wheatley, Ark. Clean rice, 517 (531).
- Angola, La. Ferry tolls, 462.
- Anniston, Ala., from Nashville and Chattanooga, Tenn., Birmingham, Ala., and Atlanta, Ga. Paper boxes, 559 (568).
- Arcadia, Fla., to Omaha, Nebr. Grapefruit and oranges, 583.

- Ardmore, Okla., from Kansas City and St. Louis, Mo., Fort Worth, Tex., and Wichita, Kans. Horses and mules, 479 (485).
- Ardmore, Okla., from Louisiana. Strawberries; express rates, 390.
- Arizona to and from Texas. Horses and mules, 479.
- Arkansas from Emeryville, Calif. Insulators, 282.
- Arkansas to official, southern, and western territories. Clean rice, 517.
- Arkansas to and from Oklahoma and Arkansas. Brick, 210.
- Arkansas from Pyramid and Sweetwater, Tex. Cement plaster, 315.
- Arkansas to and from Texas. Horses and mules, 479.
- Arkansas from Wichita, Kans. Horses and mules, 479 (490).
- Arthur, Iowa, to Chicago, Ill., Popcorn, 587.
- Asheville, N. C., from Stuttgart, De Witt, Lonoke, Carlisle, and Wheatley, Ark. Clean rice, 517 (531).
- Ashland, Ky., from Stuttgart, De Witt, Lonoke, Carlisle, and Wheatley, Ark. Clean rice, 517 (531).
- Atchison, Kans., from Kansas and Colorado, transited at Kansas City, Kans.-Mo. Wheat, 200.
- Athens, Ga., from Nashville and Chattanooga, Tenn., Birmingham, Ala., and Atlanta, Ga. Paper boxes, 559 (568).
- Atlanta, Ga., to Chattanooga, Tenn. Scrap paper, 147.
- Atlanta, Ga., to Chicago, Ill. Canned meats, 360.
- Atlanta, Ga., to Evansville, Ind., and Milwaukee, Wis. Empty returned beverage containers, 512.
- Atlanta, Ga., from Nashville and Chattanooga, Tenn., and Birmingham, Ala. Paper boxes, 559 (568).
- Atlanta, Ga., to southeastern and south Atlantic coast points. Paper boxes, 559.
- Atlanta, Ga., from Stuttgart, De Witt, Lonoke, Carlisle, and Wheatley, Ark. Clean rice, 517 (531).
- Atlanta, Ga., from various points. Horses and mules, 325.
- Atlanta, Ga., from West Virginia. Coal, 423 (425).
- Atlantic ports. Wharfage and handling charges, 609.
- Atlas, Idaho, to Spokane, Wash. Fuel wood, 157.
- Auburn, N. Y., from Indianapolis, Ind. Sisal, 297 (298).
- Augusta, Ga., from Nashville and Chattanooga, Tenn., Birmingham, Ala., and Atlanta, Ga. Paper boxes, 559 (568).
- Avondale, Pa., from Jersey City, N. J. Stable manure, 349 (351).
- Baker, Oreg., from Salt Lake City, Utah. Gasoline, 278.
- Bakerton, W. Va., to Pennsylvania, Ohio, and West Virginia. Lime, 617 (621).
- Ballinger, Tex., from Blythe, Calif., destined to Galveston, Tex. Cotton, 260.
- Baltimore, Md., from Georgia, Alabama, and Chattanooga, Tenn. Peaches, 534 (535).
- Baltimore, Md., to Washington, N. C. Cotton shirt forms, 388.
- Baltimore (Canton), Md., to Huntington, W. Va. Steel billets, 216.
- Bangor, Pa., from West and South transited and reshipped to trunk-line and New England territories. Grain and grain products, 129.
- Barber, Va., to Greensboro, N. C. Ground limestone, 186.
- Barberton, Ohio, to Duluth, Minn., destined to Virginia, Minn. Iron pipe fittings, 79.
- Battle Creek, Mich., to Jackson, Mich. Class and commodity rates, 339 (340).
- Bay Minette, Ala., to central and western territories. Oranges, 432.
- Bayonne, N. J., to Brooklyn, N. Y. Petroleum oil, 539.

- Baytown, Tex., from Ranger, Tex., originating at Alliance, Ohio. Steel plates, 331.
- Beatrice, Nebr., to Mississippi. Grain and grain products; reshipping rates, 425 (442).
- Beattyville, Ky., to Blue Island, Ill. Crude petroleum, 85.
- Beaufort, S. C., from Nashville and Chattanooga, Tenn., Birmingham, Ala., and Atlanta, Ga. Paper boxes, 559 (568).
- Beaumont, Tex., to and from Missouri. Horses and mules, 479 (488, 493).
- Beaumont, Tex., to St. Louis, Mo. Junk, 394 (397).
- Belhaven, N. C., from Chattanooga, Tenn. Boilers and fixtures, 1.
- Bellefonte, Pa., to Pennsylvania, Ohio, and West Virginia. Lime, 617 (621).
- Bellville, Tex., to Des Moines and Dubuque, Iowa. Munition lint, 681.
- Belva, W. Va., to various destinations. Coal, 423.
- Benham, Ky., to Cincinnati, Ohio, group. Coke, 572.
- Bensenville, Ill., from Neda, Wis. Ground iron ore, 427.
- Bentree, W. Va., to various destinations. Coal, 423.
- Berkeley, W. Va., to Pennsylvania, Ohio, and West Virginia. Lime, 617 (621).
- Big Fork, Minn., to Horicon, Wis. Lumber and lath, 274 (275).
- Billings, Mont., from Jacksonville, Fla. Grapefruit and oranges, 174.
- Binghamton, N. Y., from New York, N. Y. Knapsacks and old rags, 103.
- Binghamton, N. Y., to Philadelphia, Pa. Scrap brass, 344.
- Birmingham, Ala., from Nashville and Chattanooga, Tenn., and Atlanta, Ga. Paper boxes, 559 (568).
- Birmingham, Ala., to southeastern and south Atlantic coast points. Paper boxes, 559.
- Birmingham, Ala., from Stuttgart, De Witt, Lonoke, Carlisle, and Wheatley, Ark. Clean rice, 517 (531).
- Bisbee, Ariz., from Loftus, Calif. Petroleum fuel oil, 357.
- Bittinger, Pa., to Pennsylvania, Ohio, and West Virginia. Lime, 617 (621).
- Bluefield, W. Va., from Louisville, Ky., originating at Demopolis, Ala. Lumber; transportation, demurrage, and penalty charges, 58.
- Blue Island, Ill., from Irvine and Beattyville, Ky. Crude petroleum, 85.
- Blythe, Calif., to Galveston, Tex., transited at Ballinger, Tex. Cotton, 260.
- Blytheville, Ark., to Omaha, Nebr. Cucumbers in brine, 251.
- Bolivar, Mo., from Turner, Kans. Sand, 346.
- Bonita, La., to Louisville, Ky. Rough staves and headings, 593.
- Boston, Mass., from Cairo, Brookport, Gale, and Thebes, Ill. Cotton, cotton regins, and cotton linters, uncompressed, 453.
- Boston, Mass., from Georgia, Alabama and Chattanooga, Tenn. Peaches, 534 (535).
- Boston, Mass., to La Porte and Mishawaka, Ind. Wool in the grease, 26.
- Boston, Mass., from Newark, N. J. Iron and steel articles, 499.
- Boston, Mass., from Turlock, Calif. Cantaloupes, 76.
- Boston Mills, Ohio, from International Falls, Minn. Wet wood pulp, 105 (106).
- Boulder, Colo., to Wilmington, Calif. (Los Angeles Harbor). Steel rails with angles; diversion, 417.
- Bowman, Ark., from Cape Girardeau, Mo. Crushed stone, 370.
- Brantford, Ontario, from Indianapolis, Ind. Sisal, 297 (298).
- Bridge Junction, Ark., from Kansas City and St. Louis, Mo., and Wichita, Kans. Horses and mules, 479 (491).
- Bridgeport, Nebr., to Great Falls, Mont. Wheat, 377.
- Bristol, Tenn., from Stuttgart, De Witt, Lonoke, Carlisle, and Wheatley, Ark. Clean rice, 517 (531).

- Brooklyn, N. Y., from Bayonne, N. J. Petroleum oil, 539.
- Brookport, Ill., to eastern destinations. Cotton, cotton regins, and cotton linters, uncompressed, 453.
- Brownsville, Tex., to Des Moines and Dubuque, Iowa. Munition lint, 681.
- Brunswick, Ga., from Nashville and Chattanooga, Tenn., Birmingham, Ala., and Atlanta, Ga. Paper boxes, 559 (568).
- Buckeystown, Md., to Pennsylvania, Ohio, and West Virginia. Lime, 617 (621).
- Buckhannon, W. Va., to La Crosse, Wis. Empty returned beer packages, 602.
- Buffalo, N. Y., from Georgia, Alabama, and Chattanooga, Tenn. Peaches, 534 (535).
- Buffalo, N. Y., from Grand Bay, Irvington, Bay Minette, Loxley, Silver Hill, and Foley, Ala. Oranges, 432 (433).
- Buffalo, N. Y., to Jackson, Miss. Class and commodity rates, 339 (340).
- Buffalo, N. Y., to Mansfield, Miss. Steel rods, 171.
- Buffalo-Pittsburgh territory from Georgia, Alabama, and Chattanooga, Tenn. Peaches, 534.
- Bunker Hill, W. Va., to Pennsylvania, Ohio, and West Virginia. Lime, 617 (621).
- Burnsville, W. Va., to La Crosse, Wis. Empty returned beer packages, 602.
- Cabool, Mo., from Turner, Kans. Sand, 346.
- Cairo, Ill., to eastern destinations. Cotton, cotton regins, and cotton linters, uncompressed, 453.
- Cairo, Ill., from Stuttgart, De Witt, Lonoke, Carlisle, and Wheatley, Ark. Clean rice, 517 (518).
- California to Tacoma and Seattle, Wash., and Oregon. Vegetables and melons, 50.
- California to and from Texas. Horses and mules, 479.
- California to Virginia, Minn. Oranges, 596.
- Camden, N. J., from Newell, Pa. Ground fluorspar, 193.
- Canada from Georgia, Alabama and Chattanooga, Tenn. Peaches, 534.
- Canada from Oklahoma via Texas ports. Cotton; rail-and-water, and rail-water-and-rail rates, 268.
- Canada from Omar, Christian, and Logan, W. Va. Lumber, 363.
- Canton (Baltimore), Md., to Huntington, W. Va. Steel billets, 216.
- Canton, Miss., from Texas, Oklahoma, Kansas, Nebraska, Colorado, Iowa, Minnesota, Indiana, Illinois, and Missouri. Grain and grain products; re-shipping rates, 435 (442).
- Cape Charles, Va., from Jersey City, N. J. Stable manure, 349 (350).
- Cape Girardeau, Mo., to Bowman, Ark. Crushed stone, 370.
- Cape May, N. J., from Jersey City, N. J. Stable manure, 349 (350).
- Capon Road, Va., to Pennsylvania, Ohio, and West Virginia. Lime 617 (621).
- Carey, Ohio, to Jackson, Miss. Class and commodity rates, 339 (340).
- Carlisle, Ark., to official, southern, and western territories. Clean rice, 517.
- Carlisle, Pa., to Pennsylvania, Ohio, and West Virginia. Lime, 617 (621).
- Carl Junction, Mo., from Kansas City, Mo. Empty wooden boxes, 665.
- Casper, Wyo., to Delta, Utah. Petroleum coke, 547.
- Cassidy, Mo., from Turner, Kans. Sand, 346.
- Castleberry, Ala., to Mansfield, Ohio. Strawberries, 699.
- Castetown, Md., to Pennsylvania, Ohio, and West Virginia. Lime, 617 (621).
- Cedartown, Ga., from Nashville and Chattanooga, Tenn., Birmingham, Ala., and Atlanta, Ga. Paper boxes, 559 (568).
- Central territory to and from central territory. Livestock, 458.

- Central territory from Grand Bay, Irvington, Bay Minette, Loxley, Silver Hill, and Foley, Ala. Oranges, 432.
- Central territory from Indianapolis, Ind. Sisal, 297.
- Central territory from International Falls, Minn. Wet wood pulp, 105.
- Central territory to Jackson, Miss. Class and commodity rates, 339.
- Central territory from Ohio and Mississippi River crossings, and Chicago, Ill. Lumber and forest products, 279.
- Central territory from Omar, Christian, and Logan, W. Va. Lumber, 363.
- Central territory from Stuttgart, De Witt, Lonoke, Carlisle, and Wheatley, Ark. Clean rice, 517.
- Champaign, Ill., to Mississippi. Grain and grain products; reshipping rates, 435 (442).
- Charleston, S. C., from Nashville and Chattanooga, Tenn., Birmingham, Ala., and Atlanta, Ga. Paper boxes, 559 (568).
- Chattanooga, Tenn., from Atlanta, Inman yards, and Marietta, Ga. Scrap paper, 147.
- Chattanooga, Tenn., to Belhaven, N. C. Boilers and fixtures, 1.
- Chattanooga, Tenn., to Cincinnati, Ohio, group. Coke, 572.
- Chattanooga, Tenn., to Memphis, Tenn. Glass bottles, 317.
- Chattanooga, Tenn., from Nashville, Tenn., Birmingham, Ala., and Atlanta, Ga. Paper boxes, 559 (568).
- Chattanooga, Tenn., to southeastern and south Atlantic coast points. Paper boxes, 559.
- Chattanooga, Tenn., from Stuttgart, De Witt, Lonoke, Carlisle, and Wheatley, Ark. Clean rice, 517 (531).
- Chattanooga, Tenn., to trunk-line, New England, and Buffalo-Pittsburgh territories, and Canada. Peaches, 534.
- Chesapeake & Ohio Railway Stations in W. Va., to central territory and Canada. Lumber, 363.
- Chesapeake & Ohio Railway Stations in W. Va., to various destinations, 423.
- Chicago, Ill., from Arthur, Iowa. Pop corn, 587.
- Chicago, Ill., from Atlanta, Ga. Canned meats, 360.
- Chicago, Ill., to central and western trunk-line territories. Lumber and forest products, 279.
- Chicago, Ill., from Grand Bay, Irvington, Bay Minette, Loxley, Silver Hill, and Foley, Ala. Oranges, 432 (433).
- Chicago, Ill., from International Falls, Minn. Wrapping paper, 139.
- Chicago, Ill., from Neda, Wis. Ground iron ore, 427.
- Chicago, Ill., from Omar, Christian, and Logan, W. Va. Lumber, 363 (364).
- Chicago, Ill., from West Virginia. Coal, 423 (425).
- Chickasha, Okla., from Louisiana. Strawberries; express rates, 390.
- Chickasha, Okla., to trunk-line and New England territories and Canada, via Texas ports. Cotton; rail-and-water, and rail-water-and-rail rates, 268.
- Christian, W. Va., to central territory and Canada. Lumber, 363.
- Christie & Eastern Ry. Co. Lumber and forest products; divisions, 675.
- Chrome, N. J., to Ada, Okla. Steel grinding balls, 203.
- Cincinnati, Ind., from Omar, Christian, and Logan, W. Va. Lumber, 363 (364).
- Cincinnati, Ohio, from Dyer, Tenn. Poultry crates, 386.
- Cincinnati, Ohio, from Grand Bay, Irvington, Bay Minette, Loxley, Silver Hill, and Foley, Ala. Oranges, 432 (433).
- Cincinnati, Ohio, from Virginia, Kentucky, and Tennessee. Coke, 572.
- Cincinnati, Ohio, from West Virginia. Coal, 423 (425).
- Circleville, Ohio, to Jackson, Miss. Class and commodity rates, 339 (340).

- Claremont, S. Dak., to Minneapolis, Minn. Grain, 151.
- Clarendon, Ark., to Oswego, Kans. Mussel shells, 599.
- Clarksburg, W. Va. Wire-bound box material; transit arrangements, 207.
- Claymont, Del., to Lancaster, Steelton, York, Warren, and Oil City, Pa. Steel plates, 37.
- Clayton, N. Mex., from Tulsa, Okla., via Pueblo, Colo. Gasoline and kerosene, 691.
- Cleveland, Ohio. Yellow pine lumber; demurrage, 661.
- Cleveland, Ohio, from Grand Bay, Irvington, Bay Minette, Loxley, Silver Hill, and Foley, Ala. Oranges, 432 (433).
- Cleveland, Ohio, from Neda, Wis. Ground iron ore, 427.
- Cleveland, Ohio, to San Francisco and Los Angeles, Calif. Woven paper fabric bags, 694.
- Clinton, Okla., from Louisiana. Strawberries; express rates, 390.
- Clinton group, Ind., to Marion, Kokomo, Elwood, Michigantown, and Warren, Ind. Bituminous coal, 183.
- Coalton, W. Va., to La Crosse, Wis. Empty returned beer packages, 602.
- Coffeyville, Kans., from Stuttgart, De Witt, Lonoke, Carlisle, and Wheatley, Ark. Clean rice, 517 (531).
- Colorado to Atchison, Leavenworth, and Fort Leavenworth, Kans., transited at Kansas City, Kans.-Mo. Wheat, 200.
- Colorado from Emeryville, Calif. Insulators, 282.
- Colorado to Galveston and Texas City, Tex. Wheat and grain, 124.
- Colorado to Mississippi. Grain and grain products; reshipping rates, 435.
- Colorado to and from Texas. Horses and mules, 479.
- Columbus, Ga., from Nashville and Chattanooga, Tenn., Birmingham, Ala., and Atlanta, Ga. Paper boxes, 559 (568).
- Columbus, Ga., to trunk-line, New England and Buffalo-Pittsburgh territories, and Canada. Peaches, 534 (535).
- Columbus, Ohio, from Grand Bay, Irvington, Bay Minette, Loxley, Silver Hill, and Foley, Ala. Oranges, 432 (433).
- Columbus, Ohio, from Neda, Wis. Ground iron ore, 427.
- Cordele, Ga., from Nashville and Chattanooga, Tenn., Birmingham, Ala., and Atlanta, Ga. Paper boxes, 559 (568).
- Corinth, Miss., from Texas, Oklahoma, Kansas, Nebraska, Colorado, Iowa, Minnesota, Indiana, Illinois, and Missouri. Grain and grain products; reshipping rates, 435 (442).
- Corsicana, Tex., to and from Kansas City, Mo. Horses and mules, 479 (493).
- Couchwood, La., to Smackover, Ark. Fabricated steel tank material, 667.
- Courtland, Kans. Construction of interchange track, 163.
- Covington, Ky., to Cincinnati, Ohio, group. Coke, 572.
- Crawford Co., Kans., from Joplin, Webb City, and Oronogo, Mo. Broken stone, 502.
- Cuyahoga Falls, Ohio, from International Falls, Minn. Wet wood pulp, 105 (106).
- Dallas, Tex., from Emeryville, Calif. Insulators, 282 (284).
- Dallas, Tex., to and from Kansas City, Mo. Horses and mules, 479 (493).
- Dallas, Tex., from Macomb, Ill. Earthenware jugs, insulated and metal jacketed, 354.
- Dallas, Tex., to St. Louis, Mo. Junk, 394 (397).
- Dallas Center, Iowa, to Omaha, Nebr. Cream; express rates, 684.
- Dalton, Ga., from Nashville and Chattanooga, Tenn., Birmingham, Ala., and Atlanta, Ga. Paper boxes, 559 (568).

- Dalton, Nebr., to Great Falls, Mont. Wheat, 377.
- Darlington, S. C., from Stuttgart, De Witt, Lonoke, Carlisle, and Wheatley, Ark. Clean rice, 517 (531).
- Dayton, Ohio, from Neda, Wis. Ground iron ore, 427.
- Decatur, Ala., from Nashville and Chattanooga, Tenn., Birmingham, Ala., and Atlanta, Ga. Paper boxes, 559 (568).
- Delaware from Jersey City, N. J. Stable manure, 349.
- Delta, Utah, from Casper, Wyo. Petroleum coke, 547.
- Delta, Utah, from Segundo, Colo. Gas coke, 551.
- Demopolis, Ala., to Louisville, Ky., reconsigned to Bluefield, W. Va. Lumber, transportation, demurrage, and penalty charges, 58.
- Denver, Colo., from Emeryville, Calif. Insulators, 282 (284).
- Des Moines, Iowa, from Brownsville, Bellville, and La Grange, Tex. Munition lint, 681.
- Des Moines, Iowa, to Mississippi. Grain and grain products; reshipping rates, 435 (442).
- Detroit, Mich., from Grand Bay, Irvington, Bay Minette, Loxley, Silver Hill, and Foley, Ala. Oranges, 432 (433).
- Detroit, Mich., to Jackson, Miss. Class and commodity rates, 339 (340).
- Detroit, Mich., to Mason City, Iowa. Tractors, 195.
- Detroit, Mich., from Neda, Wis. Ground iron ore, 427.
- Detroit, Mich., from Omar, Christian, and Logan, W. Va. Lumber, 363 (364).
- Detroit, Minn., to Lake Park, Minn. Gravel; estimated weights, 368.
- Dewey, Okla., from New Orleans, La. Imported flint pebbles, 311.
- De Witt, Ark., to official, southern, and western territories. Clean rice, 517.
- Dodge City, Kans., from Stuttgart, De Witt, Lonoke, Carlisle, and Wheatley, Ark. Clean rice, 517 (531).
- Dubuque, Iowa, from Brownsville, Bellville, and La Grange, Tex. Munition lint, 681.
- Duluth, Minn., from Barberton, Ohio, destined to Virginia, Minn. Iron pipe fittings, 79.
- Duluth, Minn., from Iowa. Brick and related articles, 81.
- Dunkinsville, Pa., to Pennsylvania, Ohio, and West Virginia. Line, 617 (621).
- Dyer, Tenn., to Cincinnati, Ohio. Poultry crates, 386.
- East Braintree, Mass., to New England. Petroleum, petroleum products, and fuel oil, 110.
- Eastern trunk-line territory to Pennsylvania, Ohio, and West Virginia. Lime, 617.
- East Grand Forks, Minn., to Topeka, Kans. Cabbage, 241.
- East Liverpool, Ohio, to Jackson, Miss. Class and commodity rates, 339 (340).
- East Liverpool, Ohio, to Jackson, Miss. Common pottery insulators, 342.
- East Point, Ga. Demurrage on private cars on private tracks, 189.
- East Portland, Oreg., from California. Vegetables and melons, 50.
- East St. Louis, Ill., from Neda, Wis. Ground iron ore, 427.
- East St. Louis, Ill., from Stuttgart, De Witt, Lonoke, Carlisle, and Wheatley Ark. Clean rice, 517 (518).
- East San Pedro, Calif., from Pacoima, Calif. Decomposed granite, 337.
- El Dorado, Ark., from Haynesville, La. Fabricated steel tank material, 667.
- Elkins, W. Va., to La Crosse, Wis. Empty returned beer packages, 602.
- Elkhart, Ind., from International Falls, Minn. Wet wood pulp, 105 (106).
- Elwood, Ind., from West Clinton and Latta, Ind. Bituminous coal, 183.
- Emery, S. Dak., to Minneapolis, Minn. Grain, 151.

- Emeryville, Calif., to Iowa, Missouri, Arkansas, Nebraska, Kansas, Oklahoma, Texas, Colorado, and New Mexico. Insulators, 282.
- Emigsville, Pa., to Pennsylvania, Ohio, and West Virginia. Lime, 617 (621).
- Engle, W. Va., to Pennsylvania, Ohio, and West Virginia. Lime, 617 (621).
- Enid, Okla., from Kansas City and St. Louis, Mo., Fort Worth, Tex., and Wichita, Kans. Horses and mules, 479 (485).
- Enid, Okla., from Louisiana. Strawberries; express rates, 390.
- Evans, Pa., to various destinations. Black blasting powder, 451.
- Evansville, Ind., from Atlanta, Ga. Empty returned beverage containers, 512.
- Evansville, Ind., from Stuttgart, De Witt, Lonoke, Carlisle, and Wheatley, Ark. Clean rice, 517 (518).
- Fairchance, Pa., to various destinations. Black blasting powder, 451.
- Fairfield, Conn., to Oakland (Melrose), Calif. Imitation leather, 544.
- Finley, N. J., from Jersey City, N. J. Stable manure, 349 (350).
- Fitzgerald, Ga., from Nashville and Chattanooga, Tenn., Birmingham, Ala., and Atlanta, Ga. Paper boxes, 559 (568).
- Florida to Omaha, Nebr. Grapefruit and oranges, 583.
- Foley, Ala., to central and western territories. Oranges, 432.
- Fort Bliss, Tex., from Los Angeles, Calif. Crushed marble, 447.
- Fort Leavenworth, Kans., from Kansas and Colorado, transited at Kansas City, Kans.-Mo. Wheat, 200.
- Fort Smith, Ark., to Jackson, Miss. Furniture, 55.
- Fort Valley, Ga., to trunk-line, New England, and Buffalo-Pittsburgh territories, and Canada. Peaches, 534 (535).
- Fort Valley, Ga., to Watuppa, Mass. Peaches, 328.
- Fort Worth, Tex., to St. Louis, Mo. Junk, 394 (397).
- Fort Worth, Tex., to and from southwestern and western territories. Horses and mules, 479.
- Fountain Rock, Md., to Pennsylvania, Ohio, and West Virginia. Lime, 617 (621).
- Fox Spur, Idaho, to Spokane, Wash. Fuel wood, 157.
- Frankfort, Ky., from Stuttgart, De Witt, Lonoke, Carlisle, and Wheatley, Ark. Clean rice, 517 (531).
- Franklin City, Va., from Jersey City, N. J. Stable manure, 349 (350).
- Frankstown, Pa., to Pennsylvania, Ohio, and West Virginia. Lime, 617 (621).
- Frederick, Md., to Pennsylvania, Ohio, and West Virginia. Lime, 617 (621).
- Freeman, S. Dak., to Minneapolis, Minn. Grain, 151.
- Fremont, Nebr., from Stuttgart, De Witt, Lonoke, Carlisle, and Wheatley, Ark. Clean rice, 517 (531).
- Gadsden, Ala., from Nashville and Chattanooga, Tenn., Birmingham, Ala., and Atlanta, Ga. Paper boxes, 559 (568).
- Gainesville, Tex., to Miami, Ariz. Crude and fuel oils, 221.
- Gale, Ill., to eastern destinations. Cotton, cotton regins, and cotton linters, uncompressed, 453.
- Galena, Kans., to South Fort Smith, Ark. Zinc ore, 119.
- Galloway, Mo., from Turner, Kans. Sand, 346.
- Galveston, Tex. Grain and wheat; port switching charges, 124.
- Galveston, Tex., from Blythe, Calif., transited at Ballinger, Tex. Cotton, 260.
- Galveston, Tex., from Emeryville, Calif. Insulators, 282 (284).
- Galveston, Tex., from Missouri, Iowa, Minnesota, Nebraska, Kansas, Colorado, and Oklahoma, for export. Grain and wheat, 124.
- Galveston, Tex., to St. Louis, Mo. Junk, 394 (397).

- Galveston, Tex., from Wichita Falls, Tex., and Oklahoma City, Okla., for export. Self-propelling freight vehicles, 635.
- Garwood, Idaho, to Spokane, Wash. Fuel wood, 157.
- Gauley, W. Va., to various destinations. Coal, 423.
- Georgetown, Del., from Jersey City, N. J. Stable manure, 349 (350).
- Georgetown, La., from Kansas City and St. Louis, Mo., Fort Worth, Tex., and Wichita, Kans. Horses and mules, 479 (485).
- Georgia to trunk-line, New England, and Buffalo-Pittsburgh territories, and Canada. Peaches, 534.
- Gibbons, Idaho, to Spokane, Wash. Fuel wood, 157.
- Goldsboro, N. C., from Stuttgart, De Witt, Lonoke, Carlisle, and Wheatley, Ark. Clean rice, 517 (531).
- Goodman, Pa., to Pennsylvania, Ohio, and West Virginia. Lime, 617 (621).
- Grafton, W. Va., to La Crosse, Wis. Empty returned beer packages, 602 (603).
- Grand Bay, Ala., to central and western territories. Oranges, 432.
- Grand Island, Nebr., from Stuttgart, De Witt, Lonoke, Carlisle, and Wheatley, Ark. Clean rice, 517 (531).
- Grand Rapids (Wisconsin Rapids), Wis., from Kansas City, Mo. Returned paper-winding cores, 607.
- Great Falls, Mont., from Bridgeport, Dalton, Lorenzo, Gurley, and Sidney, Nebr. Wheat, 377.
- Great Falls, Mont., from Jacksonville, Fla. Grapefruit and oranges, 174.
- Green Bay, Wis., to Muskogee, Okla. Toilet paper, 205.
- Green Bay, Wis., to San Antonio, Tex. Newsprint paper, wrapping paper and paper napkins, 352.
- Greendale, W. Va., to various destinations. Coal, 423.
- Greensboro, N. C., from Barber, Va. Ground limestone, 186.
- Greensboro, N. C., from Stuttgart, De Witt, Lonoke, Carlisle, and Wheatley, Ark. Clean rice, 517 (531).
- Greenville, Miss., from Stuttgart, De Witt, Lonoke, Carlisle, and Wheatley, Ark. Clean rice, 517 (531).
- Greenville, Miss., from Texas, Oklahoma, Kansas, Nebraska, Colorado, Iowa, Minnesota, Indiana, Illinois, and Missouri. Grain and grain products; reshipping rates, 435 (442).
- Greenwood, Miss., from Stuttgart, De Witt, Lonoke, Carlisle, and Wheatley, Ark. Clean rice, 517 (531).
- Griffin, Ga., to trunk-line, New England and Buffalo-Pittsburgh territories, and Canada. Peaches, 534 (535).
- Grove, Md., to Pennsylvania, Ohio, and West Virginia. Lime, 617 (621).
- Gulf ports. Fertilizer, fertilizer materials, cement, and salt; handling charges, 640.
- Gulf ports. Wharfage and handling charges, 609.
- Gurley, Nebr., to Great Falls, Mont. Wheat, 377.
- Guthrie, Okla., from Louisiana. Strawberries; express rates, 390.
- Haines City, Fla., to Omaha, Nebr. Grapefruit and oranges, 583.
- Hammond, La., to Oklahoma, Kansas, and Missouri. Strawberries; express rates, 390.
- Hanover, Pa., to Pennsylvania, Ohio, and West Virginia. Lime, 617 (621).
- Harahan, La. Ferry tolls, 462.
- Harbor Beach, Mich., to Jackson, Miss. Class and commodity rates, 339 (340).
- Harrisburg, Ill., to La Fayette, Ind. Bituminous coal, 579.
- Hartford City, Ind., from International Falls, Minn. Wet wood pulp, 105 (106)

- Hastings, Nebr., to Mississippi. Grain and grain products; reshipping rates, 435 (442).
- Hastings, Nebr., from Stuttgart, De Witt, Lonoke, Carlisle, and Wheatley, Ark. Clean rice, 517 (531).
- Haynesville, La., to Smackover and El Dorado, Ark. Fabricated steel tank material, 667.
- Helena, Mont., from Jacksonville, Fla. Grapefruit and oranges, 174.
- Herrin, Ill., to Ladysmith, Wis. Bituminous coal, 95 (96).
- Hope, Ark., from Kansas City and St. Louis, Mo., Fort Worth, Tex., and Wichita, Kans. Horses and mules, 479 (485).
- Hopewell, Va., to Oklahoma City, Okla. Steel tanks, 213.
- Horicon, Wis., from Big Fork, Minn. Lumber and lath, 275.
- Houston, Tex., to and from Missouri. Horses and mules, 479 (488, 493).
- Houston, Tex., from Nashville, Tenn. Corrugated boxes, 65.
- Humboldt, S. Dak., to Minneapolis, Minn. Grain, 151.
- Huntington, W. Va., from South Kearney, N. J., Canton (Baltimore), Md., and Philadelphia, Pa. Steel billets, 216.
- Huntsville, Ala., from Nashville and Chattanooga, Tenn., Birmingham, Ala., and Atlanta, Ga. Paper boxes, 559 (568).
- Idaho to and from Oregon, Idaho, Washington, Utah, and Montana. Live-stock, 304.
- Idaho from South Dakota via Aberdeen, S. Dak. Corn, 411.
- Idaho to Spokane, Wash. Fuel wood, 157.
- Illinois to Ladysmith, Wis. Bituminous coal, 95.
- Illinois to Mississippi. Grain and grain products; reshipping rates, 435.
- Illinois from Pyramid and Sweetwater, Tex. Cement plaster, 315.
- Illinois to and from Texas. Horses and mules, 479.
- Independence, La., to Oklahoma, Kansas, and Missouri. Strawberries; express rates, 390.
- Indiana to La Crosse, Wis. Empty returned beer packages, 602.
- Indiana to Mississippi. Grain and grain products; reshipping rates, 435.
- Indianapolis, Ind., to central territory, New York, and Ontario, Canada. Sisal, 297.
- Indianapolis, Ind., from Omar, Christian, and Logan, W. Va. Lumber, 363 (364).
- Indianapolis, Ind., from Stuttgart, De Witt, Lonoke, Carlisle, and Wheatley, Ark. Clean rice, 517 (518).
- Inman yards, Ga., to Chattanooga, Tenn. Scrap paper, 147.
- International Falls, Minn., to central territory. Wet wood pulp, 105.
- International Falls, Minn., to Chicago, Ill. Wrapping paper, 139.
- International Falls, Minn., to McAlester, Okla., Newsprint paper, 161.
- Iowa from Emeryville, Calif. Insulators, 282.
- Iowa to Galveston and Texas City, Tex. Wheat and grain, 124.
- Iowa to Minnesota, Wisconsin, and Nebraska. Brick and related articles, 81.
- Iowa to Mississippi. Grain and grain products; reshipping rates, 435.
- Iowa to and from Texas. Horses and mules, 479.
- Irvine, Ky., to Blue Island, Ill. Crude petroleum, 85.
- Irvington, Ala., to central and western territory. Oranges, 432.
- Jackson, Mich., from Indianapolis, Ind. Sisal, 297 (298).
- Jackson, Miss., from central territory. Class and commodity rates, 339.
- Jackson, Miss., from East Liverpool, Ohio. Common pottery insulators, 342.
- Jackson, Miss., from Fort Smith, Ark. Furniture, 55.
- Jackson, Miss., from Wheatley, Ark. Rice bran, 322.

- Jacksonville, Fla., to Billings, Great Falls, and Helena, Mont. Grapefruit and oranges, 174.
- Jacksonville, Fla., from Nashville and Chattanooga, Tenn., Birmingham, Ala., and Atlanta, Ga. Paper boxes, 559 (568).
- Java from San Francisco, Calif., originating at Alabama City, Ala., Lebanon, Pa., and Warren, Ohio. Iron and steel articles, 235.
- Jena, La., from Kansas City and St. Louis, Mo., and Wichita, Kans. Horses and mules, 479 (491).
- Jersey City, N. J., to New Jersey, Pennsylvania, Delaware, Maryland, and Virginia. Stable manure, 349.
- Johannesburg, Calif., from Minnequa, Colo. Solvent naphtha, 197.
- Johnstown, Pa., to Mansfield Mass. Steel rods, 171.
- Joplin, Mo., to Crawford County, Kans. Broken stones, 502.
- Joplin, Mo., from Louisiana. Strawberries; express rates, 390.
- Joplin, Mo., to South Fort Smith, Ark. Zinc ore, 119.
- Joplin-Galena district, Mo., to Crawford County, Kans. Broken stone, 502.
- Kalamazoo, Mich., from West Virginia. Coal, 423 (425).
- Kankakee, Ill., from Neda, Wis. Ground iron ore, 427.
- Kansas to Atchison, Leavenworth, and Fort Leavenworth, Kans., transited at Kansas City, Kans.-Mo. Wheat, 200.
- Kansas from Emeryville, Calif. Insulators, 282.
- Kansas to Galveston and Texas City, Tex. Wheat and grain, 124.
- Kansas from Louisiana. Strawberries; express rates, 390.
- Kansas from Memphis, Tenn. Oyster shells, 394.
- Kansas to Mississippi. Grain and grain products; reshipping rates, 435.
- Kansas from South Fort Smith, Ark. Zinc ore, 119.
- Kansas from Stuttgart, De Witt, Lonoke, Carlisle, and Wheatley, Ark. Clean rice, 517 (518).
- Kansas to and from Texas. Horses and mules, 479.
- Kansas City, Kans.-Mo., to Atchison, Leavenworth, and Fort Leavenworth, Kans., originating in Kansas and Colorado. Wheat, 200.
- Kansas City, Mo., to Carl Junction, Mo. Empty wooden boxes, 665.
- Kansas City, Mo., from Emeryville, Calif. Insulators, 282 (284).
- Kansas City, Mo., to Louisiana and Texas. Horses and mules, 479 (492).
- Kansas City, Mo., to Montgomery, Ala. Sorghum seed, 67.
- Kansas City, Mo., from Stuttgart, De Witt, Lonoke, Carlisle, and Wheatley, Ark. Clean rice, 517 (531).
- Kansas City, Mo., to Wisconsin Rapids (Grand Rapids), Wis. Returned paper-winding cores, 607.
- Kearney, Nebr., from Stuttgart, De Witt, Lonoke, Carlisle, and Wheatley, Ark. Clean rice, 517 (531).
- Kentucky to Cincinnati, Ohio, group. Coke, 572.
- Kentucky to La Crosse, Wis. Empty returned beer packages, 602.
- Kentucky to Ladysmith, Wis. Bituminous coal, 95.
- Knoxville, Tenn., from Nashville and Chattanooga, Tenn., Birmingham, Ala., and Atlanta, Ga. Paper boxes, 559 (568).
- Knoxville, Tenn., to South Carolina. Concrete sewer pipe, 179.
- Kokomo, Ind., from International Falls, Minn. Wet wood pulp, 105 (106).
- Kokomo, Ind., from West Clinton and Latta, Ind. Bituminous coal, 183.
- La Crosse, Wis., from West Virginia, Virginia, New York, Pennsylvania, Ohio, Kentucky, Indiana, Michigan, and Washington. Empty returned beer packages, 602.
- Ladysmith, Wis., from Illinois and Kentucky. Bituminous coal, 95.

- Ladysmith, Wis., to McAlester, Okla. Newsprint paper, 161.
 LaFayette, Ind., from Harrisburg, Ill. Bituminous coal, 579.
 La Follette, Tenn., to Cincinnati, Ohio, group. Coke, 572.
 LaGrange, Tex., to Des Moines and Dubuque, Iowa. Munition lint, 681.
 Lake Charles, La., to and from Missouri. Horses and mules, 479 (488, 493).
 Lake Charles, La., to St. Louis, Mo. Junk, 394 (397).
 Lake Park, Minn., from Detroit, Minn. Gravel; estimated weights, 368.
 Lake Preston, S. Dak., from Agar, S. Dak., originating at Ziegler, Ill. Coal, 687.
 Lancaster, Pa., from Claymont, Del. Steel plates, 37.
 Lancaster, Pa., from Jersey City, N. J. Stable manure, 349 (350).
 Langley, S. C., to Neenah, Wis. Clay, 591.
 Lansing, Mich., to Jackson, Miss. Class and commodity rates, 339 (340).
 La Porte, Ind., from Boston and Lowell, Mass., New London, Conn., and New York, N. Y. Wool in the grease, 26.
 Latta, Ind., to Marion, Kokomo, Elwood, Michigantown, and Warren, Ind. Bituminous coal, 183.
 Lawton, Okla., from Louisiana. Strawberries; express rates, 390.
 Leavenworth, Kans., from Kansas and Colorado, transited at Kansas City, Kans.-Mo. Wheat, 200.
 Lebanon, Pa., to San Francisco, Calif., destined to Java. Iron and steel articles, 235.
 La Gore, Md., to Pennsylvania, Ohio, and West Virginia. Lime, 617 (621).
 Lime Kiln, Md., to Pennsylvania, Ohio, and West Virginia. Lime, 617 (621).
 Lincoln, Nebr., from Grand Bay, Irvington, Bay Minette, Loxley, Silver Hill, and Foley, Ala. Oranges, 432 (433).
 Linton group, Ind., to Marion, Kokomo, Elwood, Michigantown, and Warren, Ind. Bituminous coal, 183.
 Little Falls, Minn., to San Antonio, Tex. Newsprint paper, wrapping paper, and paper napkins, 352.
 Little Falls, N. Y., to San Francisco, Calif. Bicycles, 697.
 Little Rock, Ark., from Kansas City and St. Louis, Mo., Fort Worth, Tex., and Wichita, Kans. Horses and mules, 479 (485).
 Lockland, Ohio, from International Falls, Minn. Wet wood pulp, 105 (106).
 Loftus, Calif., to Bisbee, Ariz. Petroleum fuel oil, 357.
 Logan, W. Va., to central territory and Canada. Lumber, 363.
 Logtown, La., from Kansas City and St. Louis, Mo., and Wichita, Kans. Horses and mules, 479 (491).
 Lonoke, Ark., to Nowata, Okla. Oak bridge flooring, 301.
 Lonoke, Ark., to official, southern, and western territories. Clean rice, 517.
 Lorenzo, Nebr., to Great Falls, Mont. Wheat, 377.
 Los Angeles, Calif., from Cleveland, Ohio. Woven paper fabric bags, 694.
 Los Angeles, Calif., to Fort Bliss, Tex. Crushed marble, 447.
 Los Angeles, Calif., from Middletown, Ohio. Bicycles, 689.
 Los Angeles, Calif., from Neda, Wis. Ground iron ore, 427.
 Los Angeles, Calif., from San Francisco, Calif. Linseed oil, 154.
 Los Angeles Harbor (Wilmington, Calif.), from Boulder, Colo. Steel rails with angles; diversion, 417.
 Louisiana to Oklahoma, Kansas, and Missouri. Strawberries; express rates, 390.
 Louisiana from Pyramid and Sweetwater, Tex. Cement plaster, 315.
 Louisiana to St. Louis, Mo. Cotton piece goods, junk, and scrap iron, 394.
 Louisiana to and from Texas. Horses and mules, 479.
 Louisiana from Wichita, Kans., and Kansas City, Mo. Horses and mules, 479 (490).

- Louisville, Ky., from Bonita, La. Rough staves and headings, 593.
- Louisville, Ky., from Demopolis, Ala., reconsigned to Bluefield, W. Va. Lumber; transportation, demurrage, and penalty charges, 58.
- Lowell, Mass., to La Porte and Mishawaka, Ind. Wool in the grease, 26.
- Loxley, Ala., to central and western territories. Oranges, 432.
- McAleer, Md., to Pennsylvania, Ohio, and West Virginia. Lime, 617 (621).
- McAlester, Okla., from Louisiana. Strawberries; express rates, 390.
- McAlester, Okla., from Port Edwards and Ladysmith, Wis., International Falls, Minn., and Alexandria, Ind. Newsprint paper, 161.
- McKees Rock, Pa., to and from various points. Various commodities, 224.
- Macomb, Ill., to Dallas, Tex. Earthenware jugs, insulated and metal jacketed, 354.
- Macomb, Ill., to North Dakota and Montana. Stoneware, 143.
- Macon, Ga., from Nashville and Chattanooga, Tenn., Birmingham, Ala., and Atlanta, Ga. Paper boxes, 559 (568).
- Macon, Ga., to trunk-line, New England, and Buffalo-Pittsburgh territories, and Canada. Peaches, 534 (535).
- Manhattan Island (North River), N. Y., from Somerville, N. J. Cast-iron soil pipe, 39.
- Manhattan Piers, N. Y. Lumber; storage and demurrage, 288.
- Manila, P. I., from San Francisco, Calif., originating at St. Louis, Mo. Plug tobacco and premium articles, 61.
- Mansfield, Mass., from Pittsburgh and Johnstown, Pa., and Buffalo, N. Y. Steel rods, 171.
- Mansfield, Ohio, from Castleberry, Ala. Strawberries, 699.
- Marietta, Ga., to Chattanooga, Tenn. Scrap paper, 147.
- Marion, Ind., to San Francisco, Calif. Electrical heating and cooking appliances, 541.
- Marion, Ind., from West Clinton and Latta, Ind. Bituminous coal, 183.
- Marked Tree, Ark., to Oswego, Kans. Mussel shells, 599.
- Martinsburg, W. Va., to Pennsylvania, Ohio, and West Virginia. Lime, 617 (621).
- Maryland from Jersey City, N. J. Stable manure, 349.
- Maryland to Pennsylvania, Ohio, and West Virginia. Lime, 617.
- Mason City, Iowa, from Detroit, Mich. Tractors, 195.
- Mason City, Iowa, to Minnesota, Wisconsin, and Nebraska. Brick and related articles, 81.
- Maysville, Ky., from Virginia, Kentucky, and Tennessee. Coke, 572.
- Meadows Yard, N. J. Lumber; storage and demurrage, 288.
- Melrose (Oakland), Calif., from Fairfield, Conn., and Newburgh, N. Y. Imitation leather, 544.
- Memphis, Tenn. Grain and grain products; reshipping rates, 435.
- Memphis, Tenn., from Chattanooga, Tenn. Glass bottles, 317.
- Memphis, Tenn., from Kansas City and St. Louis, Mo., and Wichita, Kans. Horses and mules, 479 (490, 491).
- Memphis, Tenn., to Missouri and Kansas. Oyster shells, 394.
- Memphis, Tenn., from Stuttgart, De Witt, Lonoke, Carlisle, and Wheatley, Ark. Clean rice, 517 (522).
- Memphis, Tenn., to and from Texas. Horses and mules, 479.
- Memphis, Tenn., from Tupelo, Miss. Yellow-pine lumber, 73.
- Meridian, Miss., from Wheatley, Ark. Rice bran, 322.
- Mesilla Valley, N. Mex., to Texas. Alfalfa hay; minimum weight, 43.
- Mexia, Tex., from Niles, Ohio. Iron and steel articles, 285.

- Miami, Ariz., from Gainesville, Tex. Crude and fuel oils, 221.
- Miamisburg, Ohio, from Indianapolis, Ind. Sisal, 297 (298).
- Michigan to La Crosse, Wis. Empty returned beer packages, 602.
- Michigan City, Ind., from Neda, Wis. Ground iron ore, 427.
- Michigantown, Ind., from West Clinton and Latta, Ind. Bituminous coal, 183.
- Middletown, Ohio, from International Falls, Minn. Wet wood pulp, 105 (106).
- Middletown, Ohio, to Los Angeles, Calif. Bicycles, 689.
- Middletown, Ohio, to Oakland, Calif. Bicycles, 697.
- Milledgeville, Ga., from Nashville and Chattanooga, Tenn., Birmingham, Ala., and Atlanta, Ga. Paper boxes, 559 (568).
- Miller, S. Dak., from Agar, S. Dak., originating at Ziegler, Ill. Coal, 687.
- Millville, W. Va., to Pennsylvania, Ohio, and West Virginia. Lime, 617 (621).
- Milwaukee, Wis., from Atlanta, Ga. Empty returned beverage containers, 512.
- Minneapolis, Minn. Grain; absorption of switching, 151.
- Minneapolis, Minn., from Grand Bay, Irvington, Bay Minette, Loxley, Silver Hill, and Foley, Ala. Oranges, 432 (433).
- Minnequa, Colo., to Johannesburg, Calif. Solvent naphtha, 197.
- Minnesota to Galveston and Texas City, Tex. Wheat and grain, 124.
- Minnesota from Iowa. Brick and related articles, 81.
- Minnesota to Mississippi. Grain and grain products; reshipping rates, 435.
- Mishawaka, Ind., from Boston and Lowell, Mass., New London, Conn., and New York, N. Y. Wool in the grease, 26.
- Mississippi from Texas, Oklahoma, Kansas, Nebraska, Colorado, Iowa, Minnesota, Indiana, Illinois, and Missouri. Grain and grain products; reshipping rates, 435.
- Mississippi River crossings to central and western trunk-line territories. Lumber and forest products, 279.
- Mississippi River crossings from Mississippi Valley and southeastern points, destined beyond. Lumber; combination rates, 614.
- Mississippi Valley to Ohio and Mississippi River crossings, destined beyond. Lumber; combination rates, 614.
- Missouri from Emeryville, Calif. Insulators, 282.
- Missouri to Galveston and Texas City, Tex. Wheat and grain, 124.
- Missouri from Louisiana. Strawberries; express rates, 390.
- Missouri from Memphis, Tenn. Oyster shells, 394.
- Missouri to Mississippi. Grain and grain products; reshipping rates, 435.
- Missouri from Pyramid and Sweetwater, Tex. Cement plaster, 315.
- Missouri from South Fort Smith, Ark. Zinc ore, 119.
- Missouri from Stuttgart, De Witt, Lonoke, Carlisle, and Wheatley, Ark. Clean rice, 517 (518).
- Missouri to and from Texas. Horses and mules, 479.
- Moherly, Mo., from Stuttgart, De Witt, Lonoke, Carlisle, and Wheatley, Ark. Clean rice, 517 (531).
- Monmouth, Ill., to North Dakota and Montana. Stoneware, 143.
- Monroe, La., to and from Kansas City, Mo. Horses and mules, 479 (493).
- Monroe, Mich., from International Falls, Minn. Wet wood pulp, 105 (106).
- Montana from Jacksonville, Fla. Grapefruit and oranges, 174.
- Montana from Monmouth, Macomb, and Whitehall, Ill. Stoneware, 143.
- Montana to and from Oregon, Idaho, Washington, Utah, and Montana. Livestock, 304.
- Montana from South Dakota via Aberdeen, S. Dak. Corn, 411.
- Montgomery, Ala., from Kansas City, Mo. Sorghum seed, 67.

- Montgomery, Ala., from Nashville and Chattanooga, Tenn., Birmingham, Ala., and Atlanta, Ga. Paper boxes, 559 (568).
- Montgomery, Ala., from New Orleans, La. Green coffee, 555.
- Montgomery, Ala., from Stuttgart, De Witt, Lonoke, Carlisle, and Wheatley, Ark. Clean rice, 517 (531).
- Moultrie, Ga., from Nashville and Chattanooga, Tenn., Birmingham, Ala., and Atlanta, Ga. Paper boxes, 559 (570).
- Mount Olive, Ill., to West Pullman, Ill. Bituminous coal, 53.
- Muncie, Ind., from Schuyler and Tye River, Va. Soapstone disks, 271.
- Muskogee, Okla., from Green Bay, Wis. Toilet paper, 205.
- Muskogee, Okla., from Louisiana. Strawberries; express rates, 390.
- Nashville, Tenn., to Houston, Tex. Corrugated boxes, 65.
- Nashville, Tenn., to southeastern and south Atlantic coast points. Paper boxes, 559.
- Nashville, Tenn., from Stuttgart, De Witt, Lonoke, Carlisle, and Wheatley, Ark. Clean rice, 517 (531).
- Natchez, Miss. Ferry tolls, 462.
- Natchez, Miss., to and from Texas. Horses and mules, 479.
- Natchez, Miss., from Texas, Oklahoma, Kansas, Nebraska, Colorado, Iowa, Minnesota, Indiana, Illinois, and Missouri. Grain and grain products; reshipping rates, 435 (442).
- Nebraska from Emeryville, Calif. Insulators, 282.
- Nebraska to Galveston and Texas City, Tex. Wheat and grain, 124.
- Nebraska to Great Falls, Mont. Wheat, 377.
- Nebraska from Iowa. Brick and related articles, 81.
- Nebraska to Mississippi. Grain and grain products; reshipping rates, 435.
- Nebraska from Stuttgart, De Witt, Lonoke, Carlisle, and Wheatley, Ark. Clean rice, 517 (518).
- Nebraska to and from Texas. Horses and mules, 479.
- Neda, Wis., to various destinations. Ground iron ore, 427.
- Neenah, Wis., from Langley, S. C. Clay, 591.
- Nekoosa, Wis., to San Antonio, Tex. Newsprint paper, wrapping paper, and paper napkins, 352.
- Nevada, Mo., to Mississippi. Grain and grain products; reshipping rates, 435 (442).
- Newark, N. J., to New England points. Iron and steel articles, 499.
- Newark, Ohio, from Indianapolis, Ind. Sisal, 297 (298).
- Newburgh, N. Y., to Oakland (Melrose) Calif. Imitation leather, 544.
- New Church, Va., from Jersey City, N. J. Stable manure, 349 (350).
- Newell, Pa., to Camden, N. J. Ground fluorspar, 193.
- New England from East Braintree, Mass. Petroleum, petroleum products, and fuel oil, 110.
- New England from Georgia, Alabama, and Chattanooga, Tenn. Peaches, 534.
- New England points from Newark, N. J. Iron and steel articles, 499.
- New England territory from Bangor, Pa., originating in the south and west. Grain and grain products, 129.
- New England territory from Oklahoma, via Texas ports. Cotton; rail-and-water, and rail-water-and-rail rates, 268.
- New Jersey from Jersey City, N. J. Stable manure, 349.
- New Jersey to Pennsylvania, Ohio, and West Virginia. Lime, 617.
- New London, Conn., to La Porte and Mishawaka, Ind. Wool in the grease, 26.
- New Mexico from Emeryville, Calif. Insulators, 282.

- New Mexico from St. Louis, Mo., Shreveport, La., and other defined territories.
Wire, nails, and staples, 31.
- New Mexico to and from Texas. Horses and mules, 479.
- New Orleans, La. Ferry tolls, 462.
- New Orleans, La. Wharfage and handling charges, 609.
- New Orleans, La., to Dewey, Okla. Imported flint pebbles, 311.
- New Orleans, La., to and from Kansas City, Mo. Horses and mules, 479 (493).
- New Orleans, La., from Kansas City and St. Louis, Mo., Fort Worth, Tex., and Wichita, Kans. Horses and mules, 479 (485).
- New Orleans, La., to Montgomery, Ala. Green coffee, 555.
- New Orleans, La., from Neda, Wis. Ground iron ore, 427.
- New Orleans, La., from Stuttgart, De Witt, Lonoke, Carlisle, and Wheatley, Ark. Clean rice, 517 (522).
- New Orleans, La., from Texas, Oklahoma, Kansas, Nebraska, Colorado, Iowa, Minnesota, Indiana, Illinois, and Missouri. Grain and grain products; reshipping rates, 435 (442).
- New Orleans, La., from Wichita Falls, Tex., and Oklahoma City, Okla., for export. Self-propelling freight vehicles, 635.
- Newport News, Va., from West Virginia. Coal, 423 (425).
- New York from Indianapolis, Ind. Sisal, 297.
- New York to La Crosse, Wis. Empty returned beer packages, 602.
- New York to Pennsylvania, Ohio, and West Virginia. Lime, 617.
- New York, N. Y., to Binghamton, N. Y. Knapsacks and old rags, 103.
- New York, N. Y., from Cairo, Brookport, Gale, and Thebes, Ill. Cotton, cotton regins, and cotton linters, uncompressed, 453.
- New York, N. Y., from Georgia, Alabama, and Chattanooga, Tenn. Peaches, 534 (535).
- New York, N. Y., to La Porte and Mishawaka, Ind. Wool in the grease, 26.
- New York, N. Y., from Norwich, N. Y. Drugs and medicines, 246.
- New York, N. Y., from Turlock, Calif. Cantaloupes; express, 76.
- New York Harbor points. Lumber; storage and demurrage, 288.
- Niles, Ohio, to Mexia, Tex. Iron and steel articles, 285.
- North Baton Rouge, La. Ferry tolls, 462.
- North Dakota from Monmouth, Macomb, and Whitehall, Ill. Stoneware, 143.
- Northfield, Vt., to Anderson, Ind. Granite monuments, 309.
- North Pacific coast points to southern points. Cedar lumber and cedar shingles, 501.
- North River, Manhattan Island, N. Y., from Somerville, N. J. Cast-iron soil pipe, 39.
- Norton, Va., from Sears, Mich. Potatoes; misrouting, 69.
- Norwich, N. Y., to New York, N. Y. Drugs and medicines, 246.
- Nowata, Okla., from Lonoke, Ark. Oak bridge flooring, 301.
- Oakland, Calif., from Middletown Ohio. Bicycles, 697.
- Oakland (Melrose), Calif., from Fairfield, Conn., and Newburgh, N. Y. Imitation leather, 544.
- Oakley, S. C., from Knoxville, Tenn. Concrete sewer pipe, 179.
- Official classification territory. Set-up wooden chair and lounge frames, 506.
- Official classification territory. Various commodities; rating, 400.
- Official classification territory to Anderson, Ind. Used files, 373.
- Official classification territory from Stuttgart, De Witt, Lonoke, Carlisle, and Wheatley, Ark. Clean rice, 517.
- Oglethorpe, Ga., to trunk-line, New England, and Buffalo-Pittsburgh territories, and Canada. Peaches, 534 (535).

- Ohio to La Crosse, Wis. Empty returned beer packages, 602.
- Ohio from Pennsylvania, West Virginia, Maryland, Virginia, New Jersey, New York, and Vermont. Lime, 617.
- Ohio River crossings to central and western trunk-line territories. Lumber and forest products, 279.
- Ohio River crossings from Mississippi Valley and southeastern points, destined beyond. Lumber; combination rates, 614.
- Oil City, Pa., from Claymont, Del. Steel plates, 37.
- Oklahoma from Emeryville, Calif. Insulators, 282.
- Oklahoma to Galveston and Texas City, Tex. Wheat and grain, 124.
- Oklahoma from Louisiana. Strawberries; express rates, 390.
- Oklahoma to Mississippi. Grain and grain products; reshipping rates, 435.
- Oklahoma to and from Oklahoma, Arkansas, and Texas. Brick, 210.
- Oklahoma to St Louis, Mo. Cotton piece goods, junk, and scrap iron, 394.
- Oklahoma from St. Louis, Mo., Shreveport, La., and other defined territories. Wire, nails, and staples, 31.
- Oklahoma from South Fort Smith, Ark. Zinc ore, 119.
- Oklahoma from Stuttgart, De Witt, Lonoke, Carlisle, and Wheatley, Ark. Clean rice, 517 (518).
- Oklahoma to and from Texas. Horses and mules, 479.
- Oklahoma to trunk-line and New England territories, and Canada, via Texas ports. Cotton; rail-and-water, and rail-water-and-rail rates, 268.
- Oklahoma City, Okla., from Emeryville, Calif. Insulators, 282 (284).
- Oklahoma City, Okla., to Galveston, Tex., and New Orleans, La., for export. Self-propelling freight vehicles, 635.
- Oklahoma City, Okla., from Hopewell, Va. Steel tanks, 213.
- Oklahoma City, Okla., from Kansas City and St. Louis, Mo., Fort Worth, Tex., and Wichita, Kans. Horses and mules, 479 (485).
- Oklahoma City, Okla., from Louisiana. Strawberries; express rates, 390.
- Oklahoma City, Okla., to trunk-line and New England territories and Canada via Texas ports. Cotton; rail-and-water, and rail-water-and-rail rates, 268.
- Omaha, Nebr., from Albion and Dallas Center, Iowa. Cream; express rates, 684.
- Omaha, Nebr., from Blytheville, Ark. Cucumbers in brine, 251.
- Omaha, Nebr., from Emeryville, Calif. Insulators, 282 (284).
- Omaha, Nebr., from Grand Bay, Irvington, Bay Minette, Loxley, Silver Hill, and Foley, Ala. Oranges, 432 (433).
- Omaha, Nebr., from Haines City, Winter Haven, Arcadia, and Palmetto, Fla. Grapefruit and oranges, 583.
- Omaha, Nebr., from Iowa. Brick and related articles, 81.
- Omaha, Nebr., to Mississippi. Grain and grain products; reshipping rates, 435 (442).
- Omaha, Nebr., from Seattle, Wash. Rubber articles, 243.
- Omaha, Nebr., from Stuttgart, De Witt, Lonoke, Carlisle, and Wheatley, Ark. Clean rice, 517 (531).
- Omar, W. Va., to central territory and Canada. Lumber, 363.
- Ontario, Canada, from Indianapolis, Ind. Sisal, 297.
- Orangeburg, S. C., from Stuttgart, De Witt, Lonoke, Carlisle, and Wheatley, Ark. Clean rice, 517 (531).
- Oregon from California. Vegetables and melons, 50.
- Oregon to and from Oregon, Idaho, Washington, Utah, and Montana. Live-stock, 304.
- Oregon from South Dakota via Aberdeen, S. Dak. Corn, 411.
- Oronogo, Mo., to Crawford County, Kans. Broken stone, 502.

- Oswego, Kans., from Marked Tree, Pocahontas, and Clarendon, Ark. Mussel shells, 599.
- Pacific coast terminals from Neda, Wis. Ground iron ore, 427.
- Pacoima, Calif., to East San Pedro, Calif. Decomposed granite, 337.
- Paducah, Ky., from Stuttgart, De Witt, Lonoke, Carlisle, and Wheatley, Ark. Clean rice, 517 (531).
- Palmetto, Fla., to Omaha, Nebr. Grapefruit and oranges, 583.
- Peach, Ark., from Kansas City and St. Louis, Mo., and Wichita, Kans. Horses and mules, 479 (491).
- Pecos Valley, N. Mex., to Texas. Alfalfa hay; minimum weight, 43.
- Pennsylvania from Jersey City, N. J. Stable manure, 349.
- Pennsylvania to La Crosse, Wis. Empty returned beer packages, 602.
- Pennsylvania to Pennsylvania, Ohio, and West Virginia. Lime, 617.
- Pennsylvania, from Pennsylvania, West Virginia, Maryland, Virginia, New Jersey, New York, and Vermont. Lime, 617.
- Peoria, Ill. Switching, 3.
- Peoria, Ill., from Indianapolis, Ind. Sisal, 297 (298).
- Philadelphia, Pa., from Binghamton, N. Y. Scrap brass, 344.
- Philadelphia, Pa., from Georgia, Alabama, and Chattanooga, Tenn. Peaches, 534 (535).
- Philadelphia, Pa., to Huntington, W. Va. Steel billets, 216.
- Pittsburg, Kans., from Stuttgart, De Witt, Lonoke, Carlisle, and Wheatley, Ark. Clean rice, 517 (531).
- Pittsburgh, Pa., from Grand Bay, Irvington, Bay Minette, Loxley, Silver Hill, and Foley, Ala. Oranges, 432.
- Pittsburgh, Pa., to Jackson, Miss. Class and commodity rates, 339 (340).
- Pittsburgh, Pa., to Mansfield, Mass. Steel rods, 171.
- Pittsburgh, Pa., from Neda, Wis. Ground iron ore, 427.
- Pittsburgh, Pa., from Omar, Christian, and Logan, W. Va. Lumber, 363 (364).
- Pittsburgh, Pa., group from Fairchance and Evans, Pa., and Rita, W. Va. Black blasting powder, 451.
- Pleasant Gap, Pa., to Pennsylvania, Ohio, and West Virginia. Lime, 617 (621).
- Pocahontas, Ark., to Oswego, Kans. Mussel shells, 599.
- Ponchatoula, La., to Oklahoma, Kansas, and Missouri. Strawberries; express rates, 390.
- Poplar Bluff, Mo., from Stuttgart, De Witt, Lonoke, Carlisle, and Wheatley, Ark. Clean rice, 517 (531).
- Port Edwards, Wis., to McAlester, Okla. Newsprint paper, 161.
- Port Edwards, Wis., to San Antonio, Tex. Newsprint paper, wrapping paper, and paper napkins, 352.
- Port Royal, S. C., from Nashville and Chattanooga, Tenn., Birmingham, Ala., and Atlanta, Ga. Paper boxes, 559 (568).
- Pueblo, Colo., from Clayton, N. Mex., originating at Tulsa, Okla. Gasoline and kerosene, 691.
- Pyramid, Tex., to Arkansas, Louisiana, Missouri, and Illinois. Cement plaster, 315.
- Quitman, Ga., from Nashville and Chattanooga, Tenn., Birmingham, Ala., and Atlanta, Ga. Paper boxes, 559 (568).
- Raleigh, N. C., from West Virginia. Coal, 423 (425).
- Ranger, Tex., from Alliance, Ohio, reconsigned to Baytown, Tex. Steel plates, 331.
- Rhineland, Wis., to San Antonio, Tex. Newsprint paper, wrapping paper, and paper napkins, 352.

- Richmond, Va., from West Virginia. Coal, 423 (425).
- Richwood, W. Va., to La Crosse, Wis. Empty returned beer packages, 602.
- Rita, W. Va., to various destinations. Black blasting powder, 451.
- Rittman, Ohio, from International Falls, Minn. Wet wood pulp, 105 (106).
- Rome, Ga., from Nashville and Chattanooga, Tenn., Birmingham, Ala., and Atlanta, Ga. Paper boxes, 559 (568).
- Ross Spur (Wild Cat Spur), Wis., to Sheboygan, Wis. Tanbark, 265.
- St. Joseph, Mo., from Sault Ste. Marie, Ontario, Canada. Newsprint paper, 381.
- St. Louis, Mo., to Oklahoma, Arkansas, and Louisiana. Horses and mules, 479 (485).
- St. Louis, Mo., to San Francisco, Calif., for export. Plug tobacco and premium articles, 61.
- St. Louis, Mo., from Stuttgart, De Witt, Lonoke, Carlisle, and Wheatley, Ark. Clean rice, 517 (531).
- St. Louis, Mo., from Texas, Louisiana, and Oklahoma. Cotton piece goods, junk, and scrap iron, 394.
- St. Louis, Mo., to Texas, Oklahoma, and New Mexico. Wire, nails, and staples, 31.
- St. Marys, Ohio, from International Falls, Minn. Wet wood pulp, 105 (106).
- St. Paul, Minn., from Iowa. Brick and related articles, 81 (83).
- Salina, Kans., to Mississippi. Grain and grain products; reshipping rates, 435 (442).
- Salina, Kans., from Stuttgart, De Witt, Lonoke, Carlisle, and Wheatley, Ark. Clean rice, 517 (531).
- Salisbury, Md., from Jersey City, N. J. Stable manure, 349 (350).
- Salt Lake City, Utah, to Baker, Oreg. Gasoline, 278.
- San Antonio, Tex., from Kansas City and St. Louis, Mo. Horses and mules, 479 (488).
- San Antonio, Tex., from Little Falls, Minn., and Port Edwards, Nekoosha, Rhineland, and Green Bay, Wis. Newsprint paper, wrapping paper, and paper napkins, 352.
- Sandusky, Ohio, to Jackson, Miss. Class and commodity rates, 339 (340).
- San Francisco, Calif. Iron and steel articles; demurrage and storage charges, 235.
- San Francisco, Calif., from Cleveland, Ohio. Woven paper fabric bags, 694.
- San Francisco, Calif., to Los Angeles, Calif. Linseed oil, 154.
- San Francisco, Calif., from Marion, Ind. Electrical heating and cooking appliances, 541.
- San Francisco, Calif., from Neda, Wis. Ground iron ore, 427.
- San Francisco, Calif., from St. Louis, Mo., for export. Plug tobacco and premium articles, 61.
- San Francisco, Calif., from Westfield, Mass., and Little Falls, N. Y. Bicycles, 697.
- San Francisco, Calif., to Wilmington, N. C. Imported shelled peanuts, 237.
- Sault Ste., Marie, Ontario, Canada, to St. Joseph, Mo. Newsprint paper, 381.
- Savannah, Ga. Fertilizer, fertilizer materials, cement, and salt; handling charges, 640.
- Savannah, Ga., from Nashville and Chattanooga, Tenn., Birmingham, Ala., and Atlanta, Ga. Paper boxes, 559 (568).
- Schuyler, Va., to Toledo, Ohio, and Muncie, Ind. Soapstone disks, 271.
- Sears, Mich., to Norton, Va. Potatoes; misrouting, 69.
- Seattle, Wash., from California. Vegetables and melons, 50.
- Seattle, Wash., to Omaha, Nebr. Rubber arctics, 243.

- Segundo, Colo., to Delta, Utah. Gas coke, 551.
- Selma, Ala., from Stuttgart, De Witt, Lonoke, Carlisle, and Wheatley, Ark. Clean rice, 517 (531).
- Sheboygan, Wis., from Ross Spur (Wild Cat Spur), Wis. Tanbark, 265.
- Sheffield, Iowa, to Minnesota, Wisconsin, and Nebraska. Brick and related articles, 81.
- Sherman, Tex., to and from Kansas City, Mo. Horses and mules, 479 (493).
- Shreveport, La., to and from Missouri. Horses and mules, 479 (488, 493).
- Shreveport, La., to St. Louis, Mo. Junk, 394 (397).
- Shreveport, La., to Texas, Oklahoma, and New Mexico. Wire, nails, and staples, 31.
- Sidney, Nebr., to Great Falls, Mont. Wheat, 377.
- Sikeston, Mo., to Mississippi. Grain and grain products; reshipping rates, 435 (442).
- Silver Hill, Ala., to central and western territories. Oranges, 432.
- Sioux City, Iowa, from Grand Bay, Irvington, Bay Minette, Loxley, Silver Hill, and Foley, Ala. Oranges, 432 (433).
- Smackover, Ark., from Haynesville and Couchwood, La. Fabricated steel tank material, 667.
- Somerville, N. J., to North River, Manhattan Island, N. Y. Cast-iron soil pipe, 39.
- South Atlantic Coast points from Nashville and Chattanooga, Tenn., Atlanta, Ga., and Birmingham, Ala. Paper boxes, 559.
- South Atlantic ports. Fertilizer, fertilizer materials, cement, and salt; handling charges, 640.
- South Carolina from Knoxville, Tenn. Concrete sewer pipe, 179.
- South Dakota to Minneapolis, Minn. Grain, 151.
- South Dakota to Montana, Idaho, Washington, and Oregon via Aberdeen, S. Dak. Corn, 411.
- Southeastern points from Nashville and Chattanooga, Tenn., Atlanta, Ga., and Birmingham, Ala. Paper boxes, 559.
- Southeastern points to Ohio and Mississippi River crossings, destined beyond. Lumber; combination rates, 614.
- Southeastern territory. Marble, granite, and stone; released rates, 90.
- Southern classification territory. Set-up wooden chair and lounge frames, 506.
- Southern classification territory to Anderson, Ind. Used files, 373.
- Southern classification territory from Stuttgart, De Witt, Lonoke, Carlisle, and Wheatley, Ark. Clean rice, 517.
- Southern points to Bangor, Pa., transited and reshipped to trunk-line and New England territories. Grain and grain products, 129.
- Southern points from north Pacific coast points. Cedar lumber and cedar shingles, 501.
- South Fort Smith, Ark., from Missouri, Kansas, and Oklahoma. Zinc ore, 119.
- South Kearney, N. J., to Huntington, W. Va. Steel billets, 216.
- Southwestern territory from Fort Worth, Tex. Horses and mules, 479.
- Spokane, Wash., from Atlas, Garwood, Gibbons, and Fox Spur, Idaho. Fuel wood, 157.
- Springfield, Mo., from Stuttgart, De Witt, Lonoke, Carlisle, and Wheatley, Ark. Clean rice, 517 (531).
- Stanton, Ill., to West Pullman, Ill. Bituminous coal, 53.
- Steelton, Pa., from Claymont, Del. Steel plates, 37.
- Stephens City, Va., to Pennsylvania, Ohio, and West Virginia. Lime, 617 (621).
- Strasburg, Va., to Pennsylvania, Ohio, and West Virginia. Lime, 617 (621).

- Strasburg Junction, Va., to Pennsylvania, Ohio, and West Virginia. Lime, 617 (621).
- Stuttgart, Ark., to official, southern, and western territories. Clean rice, 517.
- Sweetwater, Tex., to Arkansas, Louisiana, Missouri, and Illinois. Cement plaster, 315.
- Sweetwater, Tex., to and from Kansas City, Mo. Horses and mules, 479 (493).
- Tacoma, Wash., from California. Vegetables and melons, 50.
- Tallapoosa, Ga., to Alton Park, Tenn. Tank and furnace blocks, 71.
- Tennessee to Cincinnati, Ohio, group. Coke, 572.
- Terre Haute, Ind. Grain and grain products; switching, 256.
- Terre Haute, Ind., from Stuttgart, De Witt, Lonoke, Carlisle, and Wheatley, Ark. Clean rice, 517 (518).
- Texarkana, Ark., from Kansas City and St. Louis Mo. Horses and mules, 479 (488).
- Texarkana, Ark.-Tex., to St. Louis, Mo. Junk, 394 (397).
- Texas to Ada, Okla. Empty returned cement bags and sacks, 605.
- Texas from Emeryville, Calif. Insulators, 282.
- Texas to and from Louisiana, Arkansas, Oklahoma, Kansas, Missouri, Iowa, Illinois, Nebraska, Wyoming, Colorado, New Mexico, Arizona, California, Memphis, Tenn., and Vicksburg and Natchez, Miss. Horses and mules, 479.
- Texas to Mississippi. Grain and grain products; reshipping rates, 435.
- Texas to and from Oklahoma and Texas. Brick, 210.
- Texas from Pecos and Mesilla Valleys, N. Mex. Alfalfa hay; minimum weight, 43.
- Texas to St. Louis, Mo. Cotton piece goods, junk, and scrap iron, 394.
- Texas from St. Louis, Mo., Shreveport, La., and other defined territories. Wire, nails, and staples, 31.
- Texas, Md., to Pennsylvania, Ohio, and West Virginia. Lime, 617 (621).
- Texas City, Tex. Grain and wheat; trackage charges, 124.
- Texas City, Tex., from Missouri, Iowa, Minnesota, Nebraska, Kansas, Colorado, and Oklahoma for export. Grain and wheat, 124.
- Texas ports from Oklahoma, destined to trunk-line and New England territories and Canada. Cotton; rail-and-water, and rail-water-and-rail rates, 268.
- Thebes, Ill., to eastern destinations. Cotton, cotton regins, and cotton linters, uncompressed, 453.
- Thomasville, Ga., from Nashville and Chattanooga, Tenn., Birmingham, Ala., and Atlanta, Ga. Paper boxes, 559 (568).
- Thomasville, Pa., to Pennsylvania, Ohio, and West Virginia. Lime, 617 (621).
- Tickfaw, La., to Oklahoma, Kansas, and Missouri. Strawberries; express rates, 390.
- Tifton, Ga., from Nashville and Chattanooga, Tenn., Birmingham, Ala., and Atlanta, Ga. Paper boxes, 559 (568).
- Toledo, Ohio from Schuyler and Tye River, Va. Soapstone disks, 271.
- Toledo, Ohio, from West Virginia. Coal, 423 (425).
- Toledo Docks, Ohio, from West Virginia. Coal, 423 (425).
- Topeka, Kans., from East Grand Forks, Minn. Cabbage, 241.
- Topeka, Kans., from Stuttgart, De Witt, Lonoke, Carlisle, and Wheatley, Ark. Clean rice, 517 (531).
- Trunk-line territory from Bangor, Pa., originating in the south and west. Grain and grain products, 129.
- Trunk-line territory from Georgia, Alabama, and Chattanooga, Tenn. Peaches, 534.

- Trunk-line territory from Oklahoma, via Texas ports. Cotton; rail-and-water, and rail-water-and-rail rates, 268.
- Trunk-line territory from Stuttgart, De Witt, Lonoke, Carlisle, and Wheatley, Ark. Clean rice, 517 (518).
- Tulsa, Okla., to Clayton, N. Mex., via Pueblo, Colo. Gasoline and kerosene, 691.
- Tulsa, Okla., from Louisiana. Strawberries; express rates, 390.
- Tupelo, Miss., to Memphis, Tenn. Yellow pine lumber, 73.
- Turlock, Calif., to New York, N. Y., and Boston, Mass. Cantaloupes; express, 76.
- Turner, Kans., to Bolivar, Cabool, Galloway, and Cassidy, Mo. Sand, 346.
- Twin Cities from Iowa. Brick and related articles, 81.
- Tye River, Va., to Toledo, Ohio, and Muncie, Ind. Soapstone disks, 271.
- Tyrone Forge, Pa., to Pennsylvania, Ohio, and West Virginia. Lime, 617 (621).
- Union Bridge, Md., to Pennsylvania, Ohio, and West Virginia. Lime, 617 (621).
- Union Furnace, Pa., to Pennsylvania, Ohio, and West Virginia. Lime, 617 (621).
- Utah to and from Oregon, Idaho, Washington, Utah, and Montana. Livestock, 304.
- Valdosta, Ga., from Nashville and Chattanooga, Tenn., Birmingham, Ala., and Atlanta, Ga. Paper boxes, 559 (568).
- Vancluse, Va., to Pennsylvania, Ohio, and West Virginia. Lime, 617 (621).
- Vermont to Pennsylvania, Ohio, and West Virginia. Lime, 617.
- Vicksburg, Miss. Ferry tolls, 462.
- Vicksburg, Miss., to and from Memphis, Tenn. Horses and mules, 479.
- Vicksburg, Miss., from Stuttgart, De Witt, Lonoke, Carlisle, and Wheatley, Ark. Clean rice, 517 (522).
- Vicksburg, Miss., from Texas, Oklahoma, Kansas, Nebraska, Colorado, Iowa, Minnesota, Indiana, Illinois, and Missouri. Grain and grain products; reshipping rates, 435 (442).
- Virginia to Cincinnati, Ohio, group. Coke, 572.
- Virginia from Jersey City, N. J. Stable manure, 349.
- Virginia to La Crosse, Wis. Empty returned beer packages, 602.
- Virginia to Pennsylvania, Ohio, and West Virginia. Lime, 617.
- Virginia, Minn., from California. Oranges, 596.
- Virginia, Minn., from Duluth, Minn., originating at Barbeton, Ohio. Iron pipe fittings, 79.
- Viroqua, Wis., from Winona, Minn. Sand and gravel, 99.
- Walkersville, Md., to Pennsylvania, Ohio, and West Virginia. Lime, 617 (621).
- Warren, Ind., from West Clinton and Latta, Ind. Bituminous coal, 183.
- Warren, Ohio, to San Francisco, Calif., destined to Java. Iron and steel articles, 235.
- Warren, Pa., from Claymont, Del. Steel plates, 37.
- Washington to and from Oregon, Idaho, Washington, Utah, and Montana. Livestock, 304.
- Washington from South Dakota via Aberdeen, S. Dak. Corn, 411.
- Washington, D. C., to La Crosse, Wis. Empty returned beer packages, 602.
- Washington, D. C., from West Virginia. Coal, 423 (425).
- Washington, Ga., from Nashville and Chattanooga, Tenn., Birmingham, Ala., and Atlanta, Ga. Paper boxes, 559 (568).

- Washington, N. C., from Baltimore, Md. Cotton shirt forms, 388.
- Watuppa, Mass., from Fort Valley, Ga. Peaches, 328.
- Waycross, Ga., from Nashville and Chattanooga, Tenn., Birmingham, Ala., and Atlanta, Ga. Paper boxes, 559 (568).
- Waycross, Ga., from Stuttgart, De Witt, Lonoke, Carlisle, and Wheatley, Ark. Clean rice, 517 (531).
- Webb City, Mo., to Crawford County, Kans. Broken stone, 502.
- West Clinton, Ind., to Marion, Kokomo, Elwood, Michigantown, and Warren, Ind. Bituminous coal, 183.
- Western classification territory. Set-up wooden chair and lounge frames, 506.
- Western classification territory to Anderson, Ind. Used files, 373.
- Western classification territory from Stuttgart, De Witt, Lonoke, Carlisle, and Wheatley, Ark. Clean rice, 517.
- Western points to Bangor, Pa., transited and reshipped to trunk-line and New England territories. Grain and grain products, 129.
- Western territory from Fort Worth, Tex. Horses and mules, 479.
- Western territory from Grand Bay, Irvington, Bay Minette, Loxley, Silver Hill, and Foley, Ala. Oranges, 432.
- Western trunk-line territory. Acid carboys, returned empty, 672.
- Western trunk-line territory. Junk; minimum weight, 263.
- Western trunk-line territory from Ohio and Mississippi River crossings, and Chicago, Ill. Lumber and forest products, 279.
- Westfield, Mass., to San Francisco, Calif. Bicycles, 697.
- West Plains, Mo., from Stuttgart, De Witt, Lonoke, Carlisle, and Wheatley, Ark. Clean rice, 517 (531).
- West Pullman, Ill., from Mount Olive and Staunton, Ill. Bituminous coal, 53.
- West Virginia to central territory and Canada. Lumber, 363.
- West Virginia to interstate destinations, via Clarksburg, W. Va. Wire-bound box material, 207.
- West Virginia to La Crosse, Wis. Empty returned beer packages, 602.
- West Virginia to Pennsylvania, Ohio, and West Virginia. Lime, 617.
- West Virginia from Pennsylvania, West Virginia, Maryland, Virginia, New Jersey, New York, and Vermont. Lime, 617.
- West Virginia to various destinations. Coal, 423.
- Wheatley, Ark., to Jackson and Meridian, Miss. Rice bran, 322.
- Wheatley, Ark., to official, southern, and western territories. Clean rice, 517.
- Whitehall, Ill., to North Dakota and Montana. Stoneware, 143.
- White Pigeon, Mich., from International Falls, Minn. Wet wood pulp, 105 (106).
- Wichita, Kans., to Arkansas, Louisiana, Texas, and Memphis, Tenn. Horses and mules, 479 (490).
- Wichita, Kans., from Louisiana. Strawberries; express rates, 390.
- Wichita, Kans., to Mississippi. Grain and grain products; reshipping rates, 435 (442).
- Wichita Falls, Tex., to Galveston, Tex., and New Orleans, La., for export. Self-propelling freight vehicles, 635.
- Wild Cat Spur (Ross Spur), Wis., to Sheboygan, Wis. Tanbark, 265.
- Williamson, Pa., to Pennsylvania, Ohio, and West Virginia. Lime, 617 (621).
- Williamsport, Pa., to Pennsylvania, Ohio, and West Virginia. Lime, 617 (621).
- Wilmington, Calif. (Los Angeles Harbor), from Boulder, Colo. Steel rails with angles; diversion, 417.
- Wilmington, N. C., from San Francisco, Calif. Imported shelled peanuts, 237.
- Winona, Minn., to Viroqua, Wis. Sand and gravel, 99.

- Winter Haven, Fla., to Omaha, Nebr. Grapefruit and oranges, 583.
Wisconsin from Iowa. Brick and related articles, 81.
Wisconsin Rapids (Grand Rapids), Wis., from Kansas City, Mo. Returned paper-winding cores, 607.
Woodsboro, Md., to Pennsylvania, Ohio, and West Virginia. Lime, 617 (621).
Wyoming to and from Texas. Horses and mules, 479.
Xenia, Ohio, from Indianapolis, Ind. Sisal, 297 (298).
York, Pa., from Claymont, Del. Steel plates, 37.
York, Pa., to Pennsylvania, Ohio, and West Virginia. Lime, 617 (621).
Ziegler, Ill., to Agar, S. Dak., reconsigned to Lake Preston and Miller, S. Dak. Coal, 687.

INDEX-DIGEST

[Numbers in parentheses following citations indicate pages on which subjects are considered]

ABSORPTION. *See also* SPOTTING CARS; SWITCHING.

Overruling Conf. Ruling 341, *Found*: That where a common carrier subject to the act performs an intermediate service in connection with traffic moving at joint rates, it should concur in such joint rates and receive divisions thereof, divisional arrangements to be so adjusted as to, in effect, result in absorption of the common carrier's division by the line that delivers traffic to it. *Peoria & Pekin Union Ry.*, 3 (22).

Following *Jones & Laughlin Steel Co.*, 91 I. C. C. 300, reparation awarded complainants and interveners in respect of interstate shipments on which they paid charges of the Monongahela Connecting, South Buffalo, and Union railroads, in addition to district rates of trunk-line connections, defendants having failed to justify increased rates during nonabsorption period in so far as they resulted in transportation charges exceeding those contemporaneously in effect to and from trunk-line points in same rate districts, the aggregate charges applicable during period of nonabsorption having been found unreasonable to that extent in the cited case. *Jones & Laughlin Steel Co. v. P. & L. E.*, 637.

ADJACENT FOREIGN COUNTRY.

Rate on newsprint paper from Sault Ste. Marie, Ontario, Canada, to St. Joseph, Mo., found not unreasonable as compared with lower rate subsequently established in connection with an extensive readjustment of rates prescribed in the *Paper case*, 66 I. C. C. 571. *News Corp. v. M. P.*, 381.

ADJUSTMENTS AND RELATIONSHIPS. *See also* RESTORED RATES.

Upon further hearing, rates on crude petroleum, in tank-car loads, from Irvine and Beattyville, Ky., to Blue Island, Ill., found unreasonable to extent they exceeded rates from mid-continent field. Taking into consideration the greater distance from mid-continent than from eastern Kentucky field, a parity of rates as between the two fields would sufficiently allow for mountainous character of originating territory in eastern Kentucky, for lesser volume of movement, and for lighter weight of the oil. Reasonable rates prescribed and reparation awarded. Original report, 59 I. C. C. 689, reversed. *Barnett Oil & Gas Co. v. Director General*, 85.

Rates on crude oil should be relatively lower than on refined oil. *Id.* (87).

Rates on fuel wood from certain Idaho points to Spokane, Wash., found not unreasonable because in excess of rates found reasonable for corresponding distances in *Wood Rates between North Pacific Coast Points*, 61 I. C. C. 151. Neither the voluntary nor compulsory reduction of a rate by a carrier necessarily entitles shippers under the unreduced rate to reparation; moreover, the commission has long adhered to policy that in the public interest reparation should be denied when rates reduced by its orders have been in effect for long periods and when those orders require readjustments throughout an extensive territory and affect shippers at many points. *See also* 40 I. C. C. 517; 77 I. C. C. 683. *Hawkeye Fuel Co. v. S. & E. Ry. & P. Co.*, 157.

ADJUSTMENTS AND RELATIONSHIPS—Continued.

Rate on newsprint paper from Sault Ste. Marie, Ontario, Canada, to St. Joseph, Mo., found not unreasonable as compared with lower rate subsequently established in connection with an extensive readjustment of rates prescribed in the *Paper case*, 66 I. C. C. 571. *News Corp. v. M. P.*, 381.

Fact that a rate somewhat lower than rate charged was prescribed by the commission for the future does not necessarily show that the former rate was unreasonable. Especially is this so where the new rate is part of an extensive readjustment. *Id.* (383).

One test of the reasonableness of a rate is its relation to whole rate structure of which it is a part. *Id.* (383).

Proposed increased rates on cotton and cotton regins, uncompressed, any quantity, and on cotton linters, uncompressed, l. c. l., both with carrier's privilege of compressing, from Cairo, Brookport, Gale, and Thebes, Ill., to eastern points, for purpose of restoring the relationship with rates from St. Louis, disturbed when the St. Louis rates were increased, but through oversight no similar changes were made in rates from the Illinois points, found not justified. Respondent made no reference to rates under which traffic actually moves to demonstrate reasonableness of the proposed rates, and since the St. Louis rates are paper rates, most of the cotton movement being through Memphis, they have little, if any, probative force in that connection. *Cotton, Linters, and Regins to Eastern Cities*, 453.

Proposed joint rates on cedar lumber and shingles from north Pacific coast points to southern points, which would result in both increases and reductions, the former predominating, but not reflecting lowest available combinations now in effect, found not justified. *Lumber and Shingles from North Pacific Coast*, 501.

Rates on clean rice from milling points in Arkansas to certain destinations in c. f. a., southern, and western territories, to western termini of trunk-line territory, and to points in Oklahoma, found unreasonable and unduly prejudicial in some instances as compared with corresponding rates from New Orleans, Memphis, and interior Louisiana points. Carriers in making rates have largely ignored distances in an effort to somewhat equalize conditions. Right of complainants to natural advantages of their location can not be taken away by rate adjustments and wide differences in distance between the various fields to common destinations must be recognized. Reasonable and nonprejudicial rates and bases prescribed. *Stuttgart Rice Mill Co. v. A. & V.*, 517.

Proposed revision of rates on paper boxes between points in the Southeast, found justified in part. Complaint against maintenance of commodity rates from Nashville to interior southern points, while class rates apply from Chattanooga, Atlanta, and Birmingham, and in order to satisfy insistent demands for an immediate adjustment on a more consistent and relative basis, and at same time correct existing fourth-section departures, is given as reason for the revision. The proposed rates are intended only as a temporary measure to take care of the situation until such time as all rates on paper and paper articles between points in the Southeast may be revised on a more comprehensive scale. *Paper Boxes between Southeastern Points*, 559.

ADJUSTMENTS AND RELATIONSHIPS—Continued.

Rates prescribed in the *Mississippi Valley* case, 64 I. C. C. 306, were not prescribed as standards of reasonable maximum rates, but primarily to bring about an adjustment in harmony with requirements of section 4 of the act and at same time conserve revenues of carriers. Nor may such rates be used as a measure of the rates between points in the Southeast. Id. (563).

Rate on pop-corn from Arthur, Iowa, to Chicago, found not unreasonable but unduly prejudicial in favor of competitors at Odebolt, Iowa, to extent it exceeded rate from the latter point. No damage shown as a direct result of undue prejudice found, and undue prejudice having been removed by reducing rates from Arthur and Odebolt to a common level, no order for future is necessary. *Shotwell Mfg. Co. v. C. & N. W.*, 587.

Proposed increased rates on lime from points in eastern trunk-line territory to destinations in 60 and 67 per cent territories, published in compliance with decision in *Lehigh Lime Co.*, 85 I. C. C. 341, found not justified. Proposed rates would result in numerous violations of both long-and-short-haul rule and aggregate-of-intermediates provision of section 4 of the act. In view of the competitive relationship which exists between Mitchell, Ind., and Ohio producing points on the one hand and eastern producing points on the other, findings in cited case modified and an adjustment of rates prescribed for future. Lime from Eastern Trunk Line Points, 617.

An expressed desire of shippers and carriers for the continuance of a group adjustment does not relieve the commission of duty of considering whether its continuance would result in unjust and unreasonable rates or in undue prejudice. *C., H. & D. Ry. Co. v. I. C. C.*, 206 U. S. 142. Id. (632).

In cases involving a general readjustment of rates substantial justice would not be advanced by awarding reparation to those making such demands. *Parkersburg Rig & Reel Co. v. M. P.*, 667 (669).

ADMINISTRATIVE RULINGS. See CONFERENCE RULINGS; TARIFF CIRCULAR.

ADMISSION.

Contention that admissions on part of carriers, by their offer to perform spotting service, their subsequent absorption of charge for that service, and payment of reparation, and admission on part of director general, by offer of settlement, establishes fact that line-haul rates included spotting service at points of loading and unloading, or at point of final placement within plants, *Held*: These admissions, although entitled to consideration, are not conclusive. Director General is not chargeable with concessions which may have been made by corporations which succeeded him. His offer was in nature of a compromise, and in accordance with familiar rules of law is not to be held against him. *Pressed Steel Car Co. v. Director General*, 224 (232).

ADVANCE IN RATES. See also ADJUSTMENTS AND RELATIONSHIPS; DOUBLE INCREASE.

In General:

Increased rates can not be justified solely upon showing of desire for uniformity in tariff provisions. *Iron and Steel Articles to Southwest*, 31 (36).

ADVANCE IN RATES—Continued.

In General—Continued.

Carriers stress fact that in several reports the commission has commented upon undesirability of the combination rule from a tariff standpoint, and refer to cooperation and suggestions of the Bureau of Traffic looking to ultimate elimination of the combination tariff. *Found*: Suggestions did not contemplate increases in rates, for which no sound justification is offered, by cancellation of the rule. Combination Rule on Lumber, 279 (281).

Upon contention that burden of proof to justify rates increased since January 1, 1910, was not met by defendants due to their nonappearance at the hearing, and that complainant is, therefore, entitled to an award of reparation on shipments moving under the rates as increased, *Held*: Before the commission can find that a shipper is entitled to reparation it must find that the rate is unreasonable, and fact that no evidence was offered on behalf of carriers does not preclude the commission from determining whether or not the rate was in fact unreasonable. *Nebraska Bridge Supply & Lbr. Co. v. A., T. & S. F.*, 301 (303).

Reasonableness of rates charged, and not strict conformity with prescribed method of making percentage increases in their predecessors, is the controlling consideration. *Anaconda Copper Mining Co.*, 57 I. C. C. 723, and other cited cases. *N. Y. Stable Manure Co. v. Director General*, 349 (351).

Reasonableness of an increased rate can not be established by simply showing that departures from the fourth section are thereby removed, *Iron and Steel Articles from Philadelphia*, 92 I. C. C. 123, or in order not to disturb commercial conditions. *Coal from Stations in W. Va.*, 423 (426).

Disputes between carriers over divisions afford no justification for increased rates. *Peaches from Alabama, Georgia, and Tennessee*, 534 (538).

Mere desire to eliminate the combination rule is not a justification for increased rates. Cancellation Rule for Combination Rates, 614 (615).

Bottles, glass: Proposed increased rates on, from Chattanooga to Memphis, via interstate route, for purpose of restoring previously existing relationship between Chattanooga and St. Louis, found justified. Relationship was disrupted following *Fourth Section Violations in the Southeast*, 32 I. C. C. 61, when rates from St. Louis were increased and no change was made in rates from Chattanooga, work on a readjustment being interrupted by intervention of Federal control. *Glass Bottles from Chattanooga to Memphis*, 317.

Carboys, acid: Proposed increased rating on acid carboys, returned empty, from and to points in western trunk-line territory, found justified. Acid carboys are not desirable freight and can not be handled as expeditiously or cheaply as other empty returned containers which can be tiered. There is considerable danger involved in their handling, and many restrictions not operative with respect to mineral-water and other empty returned containers increase cost of their transportation. Moreover, rating proposed is the same as that now applicable from intermediate points and will have effect of removing fourth-section departures, is the same as that generally applicable in western trunk-line territory east of Missouri River, does not appear unreasonable, and it is not shown that it will result in undue prejudice of preference. *Carboys, Returned Empty, in Western Territory*, 672.

ADVANCE IN RATES—Continued.

Coal: Proposed increased rates on, from farther distant points on the Gauley branch of the C. & O. to level of the New River or intermediate basis of rates, in order to comply with commission's order in 89 I. C. C. 638, denying fourth-section relief, found not justified. No similar increases are proposed from competing mines on the same branch north of Belva, and if advances are allowed it will be necessary for protestants to absorb them in order to continue shipping to western markets. Moreover, respondent made no effort to show that proposed rates are reasonable *per se*, and its revenue would not be materially affected were departures removed by reducing rates from the intermediate points. Coal from Stations in W. Va., 423.

Coke: Proposed increased rates on, from points in southwestern Virginia, Benham, Ky., LaFollette and Chattanooga, Tenn., to Cincinnati, Ohio, and certain points in vicinity thereof, and to Maysville, Ky., designed for purpose of restoring a parity of rates from these coke-producing points, disrupted following general increases authorized in *Increased Rates, 1920*, 58 I. C. C. 220, found not justified. Although record does not indicate that proposed rate to Cincinnati would be unreasonable, it would result in undue prejudice at that point and in undue preference of other Ohio River crossings where a similar situation exists and where a similar increase is not made. Coke to Cincinnati Group, 572.

Cotton, cotton linters, and regins: Proposed increased rates on cotton and cotton regins, uncompressed, any quantity, and on cotton linters, uncompressed, l. c. l., both with carrier's privilege of compressing, from Cairo, Brookport, Gale, and Thebes, Ill., to eastern points, for purpose of restoring relationship with rates from St. Louis, disturbed when the St. Louis rates were increased but through oversight no similar changes were made in rates from the Illinois points, found not justified. Respondent made no reference to rates, under which traffic actually moves to demonstrate reasonableness of the proposed rates, and since the St. Louis rates are paper rates, most of the cotton movement being through Memphis, they have little, if any, probative force in that connection. Cotton, Linters, and Regins to Eastern Cities, 453.

Cotton piece goods: Proposed increased rates on, any quantity, from Texas and Oklahoma points to St. Louis and points in defined territories, published to comply with order entered in connection with *Memphis-Southwestern Investigation*, 77 I. C. C. 473, denying fourth-section relief, found not justified. Respondents made no attempt to justify the increases but merely stated that they were forced to make the revision to comply with the fourth-section order. However, such compliance does not require substantial increases proposed, and respondents' revenues would not be reduced to any extent by application from intermediate points of present rate from Texas producing points. *Commodity Rates from Southwestern Points*, 394 (396).

Fluorspar: Rates on, as increased to basis higher than that authorized in the *Fifteen Per Cent case*, 45 I. C. C. 303, and subsequent general advances, and subsequently reduced to basis reflecting proper authorized advances, found not unreasonable. Complainant offered no evidence to indicate that earnings under rates attacked were excessive, but merely urges that rate was unreasonable *per se*. Moreover, the subsequent reduction of a rate is insufficient to establish unreasonableness. General Chemical Co. v. Director General, 193.

ADVANCE IN RATES—Continued.

Forms, shirt: First-class rate on cotton shirt forms, l. c. l., from Baltimore to Washington, N. C., found not reasonable as compared with lower commodity rate formerly in effect, or with rate on finished shirts in opposite direction. Commodity rate was cancelled because other manufacturers of shirt forms in North Carolina requested establishment of similar rates lower than first class and defendants urged that it would be unduly prejudicial to charge first-class rates from other points while maintaining lower commodity rates from Washington. The finished shirt rate in the opposite direction was also subsequently cancelled because considered subnormal, and first-class rates now apply in both directions. Moreover, defendants instanced first-class rates for similar and greater distances which are higher than rates charged. *Flowers & Stell v. N. S. R. R.*, 388.

Grapefruit and oranges: Joint rates from points in Florida to Omaha, to which were applied the interterritorial increases of $33\frac{1}{2}$ per cent authorized in *Increased Rates, 1920*, 58 I. C. C. 220, in lieu of the territorial increases based on rates to and from Jacksonville, found not unreasonable or in violation of the aggregate-of-intermediates provision of section 4 of the act. Situation presents a "special and unusual circumstance" sufficient to justify a departure from a strict application of the rule laid down in *Windsor Turned Goods Co.*, 18 I. C. C. 162, that the fair measure of reasonableness of a joint rate that exceeds the combination of locals is the lowest combination that would apply if the joint rate were cancelled. Moreover, it is not a fair application of the rule to condemn these joint rates as unreasonable inasmuch as no compensatory advantage is accorded when the situation is reversed. *Omaha Chamber of Commerce v. A., B. & A.*, 583.

Iron and steel articles: Proposed increased rates on, between Newark, N. J., and points grouped therewith, and New England points, found not justified. Carriers rely entirely upon fact that proposed rates will restore the spread between the Newark and Philadelphia groups established following decision in *Pardee Works*, 39 I. C. C. 162. For over seven years that spread has been treated as one varying with the rates and not as a fixed differential. Moreover, there is no evidence that rates from the Newark group are subnormal as compared with rates from other groups, and former relationship, if desired by carriers, could be readily restored by reducing rates from Philadelphia group instead of increasing those from Newark group. Iron and Steel between New Jersey and New England Points, 499.

Junk:

Proposal to apply a minimum of 50,000 pounds to mixed-carload shipments of junk in western trunk-line territory found not justified. Only one article in entire junk list carries this minimum in straight carloads, and record demonstrates that minimum proposed can only be loaded in exceptional cases. Junk in Mixed Carloads, 263.

93 I. C. C.

ADVANCE IN RATES—Continued.

Junk—Continued.

Proposed increased rates on scrap iron and cotton tie clippings from Texas points to St. Louis and points in defined territories, found not justified. Respondents made no attempt to justify proposed increases beyond stating that rates were designed for sole purpose of removing fourth-section violations in compliance with order entered in connection with *Memphis-Southwestern Investigation*, 77 I. C. C. 473. Such departures, however, could have been removed by establishing the highest rate to St. Louis at the intermediate points. Moreover, evidence was introduced to show that increases proposed would substantially reduce, if not entirely eliminate, shipments of scrap iron and junk between points here involved. *Commodity Rates from Southwestern Points*, 394 (397-398).

Lime: Proposed increased rates on, from points in eastern trunk-line territory to destinations in 60 and 67 per cent territories, published in compliance with decision in *Lehigh Lime Co.*, 85 I. C. C. 341, found not justified. Proposed rates would result in numerous violations of both the long-and-short-haul rule and aggregate-of-intermediates provision of section 4 of the act. In view of the competitive relationship which exists between Mitchell, Ind., and Ohio producing points on the one hand and eastern producing points on the other, findings in cited case modified and an adjustment of rates prescribed for future. *Lime from Eastern Trunk Line Points*, 617.

Livestock:

Director general canceled "per car" rates on livestock and established rates in cents per 100 pounds. After Federal control terminated carriers restored the "per car" basis. *Found:* Charges on shipments moving during period when rates in cents per 100 pounds were in effect found not unreasonable. Complainants depended almost entirely upon showing that increases resulted from the change but they furnished no comparisons by which reasonableness may be judged. Even if it be granted that increased rates resulted, this alone would not prove them unreasonable for such increases might have been justified by increased cost of transportation and increased value of livestock during period under consideration. *Dickerson v. Director General*, 304.

Proposal of carriers in c. f. a. territory to restrict application of combination rule on livestock so that it will only apply where all factors used in arriving at through rates from origin to ultimate destination carry reference thereto and authorize an affirmative application thereof, found not justified. Such restriction would not merely relieve respondents of assumption of deductions from western lines' separately established rates, but also from their own, since the rule would not apply where any carrier in the through route did not make appropriate reference thereto. This would result in increased charges, the burden of justifying which rests upon respondents. Moreover, from some origin points tariffs of western carriers still refer to the rule, and an inadmissible result of the restriction would be to make rates to be applied by respondent eastern lines depend upon separate tariffs of western lines. This would not accord with requirements of section 6 of the act. *Combination Rule on Livestock*, 458.

ADVANCE IN RATES—Continued.

Lumber:

Proposal to restrict application of the combination rule so that it will apply only where all issues publishing factors used in arriving at through rates from origin to destination carry reference to the rule and authorize an affirmative application thereof, found not justified. Carriers made no effort to justify increased rates which would result in instances where the rule is published in a separate combination tariff and no reference is made thereto in connection with one factor of a combination, although such reference is made in connection with other factors. While commission has repeatedly sanctioned efforts to eliminate the rule by publication in its stead of joint or proportional rates, it has denied authority to cancel it where unjustified increased rates would result. Combination Rule on Lumber, 279.

Former report, 81 I. C. C. 745, in which proposed cancellation of the combination rule for constructing combination rates on lumber between southern points and Ohio and Mississippi River crossings, and proposed restriction of routing over Atlantic Coast Line from southern points to Virginia gateways were found not justified, affirmed upon reargument. Carriers made no attempt to justify increased rates which would result; moreover the tariff provision does not fully conform to requirements of section 6 of the act and is objectionable in that restriction proposed makes necessary a search of other tariffs in order to determine whether there are joint rates over any route before it can be determined whether the combination rule is applicable. Cancellation Rule for Combination Rates, 614.

Manure: Rates on stable manure from Jersey City, on ex-water traffic originating in New York, increased following general rate advances, by applying percentage increases to gross rate, including allowance for water ferriage, instead of first deducting such allowance and applying increases to net rates, found not unreasonable or unduly prejudicial. Reasonableness of rates charged, and not strict conformity with prescribed method of making percentage increases in their predecessors, is the controlling consideration. See 57 I. C. C. 723 and other cited cases. Moreover, rates complained of were increased in same manner as all other rates which reflected allowances, and no reason appears for making an exception to that method in this instance. *N. Y. Stable Manure Co. v. Director General*, 349.

Peaches: Proposed cancellation of a route, in connection with the Southern Ry., on peaches, under joint commodity rates from points in Georgia and Alabama and from Chattanooga, to interstate destination and Canada, found not justified. This proceeding arises out of a disagreement between carriers as to proper distribution of the peach traffic, the Southern's action being motivated by a desire to obtain greater revenues by an increased volume of traffic instead of by increased divisions. Such disputes, however, afford no justification for increased rates; moreover, proposed cancellation, if permitted, will deprive shippers of a practicable route maintained for many years, unless they assume responsibility of routing over that route at increased rates which would result. Peaches from Alabama, Georgia, and Tennessee, 534.

ADVANCE IN RATES—Continued.

Plaster, cement: Proposed cancellation of joint commodity rates on, from Pyramid and Sweetwater, Tex., to certain destinations on the St. L. S. W. Ry., leaving in effect higher combinations, found not justified. The joint rates were published contrary to instructions, and sole justification offered is carrier's desire to correct this error. However, no rate change is proposed from competing points at which cement-plaster plants are located, and such a rate disadvantage would exclude protestant from markets at local Cotton Belt points. While protestant would be able to reach competitive points at equal rates, it would not enjoy as liberal routing privileges as its competitors. Moreover, protestant is as favorably situated with respect to distance as are its competitors, and no reason appears why it should not have same basis of rates. Cement Plaster from Pyramid and Sweetwater, 315.

Powder, black blasting: Proposal to cancel third-class rates plus 3 cents per 100 pounds on common black blasting powder from Fairchance and Evans, Pa., and Rita, W. Va., to stations on the B. & O. in the Pittsburgh, Pa., group and points east thereof, and to apply first-class rates, found not justified. Youngstown, Ohio, and Quaker Falls, Pa., competitive points, object to paying rates relatively higher than from Fairchance, and rather than extend the Fairchance basis carriers propose its cancellation. Proposed basis from Fairchance, however, would place that point at a disadvantage and result in fourth-section departures. Second-class rates from all origin points, satisfactory to all parties concerned, found justified. Rating on Blasting Powder, 451.

Shells, oyster: Proposal to eliminate whole or crushed oyster shells from list of fertilizer and fertilizer materials on traffic from Memphis to interior Kansas and Missouri points, result of which would be to increase rates on shells over rates on fertilizer, found not justified. In 74 I. C. C. 245 and 80 I. C. C. 604, the commission declined to authorize elimination of shells from list of articles taking fertilizer rates, and such a proposal as here contemplated is not justified by mere statement that intermediate points have had a higher basis of rates, particularly when commission has heretofore found that such exclusion was not justified. Commodity Rates from Southwestern Points, 394 (398).

Wire, nails, and staples: Proposed elimination of wire, nails, and staples from list of iron and steel articles permitted to be shipped in mixed carloads, for purpose of making tariffs in southwestern territory uniform, found not justified. Respondents' endeavor is prompted by requests of parties who desire an adjustment that will force movements through Texas jobbers. Increased rates can not be justified solely upon showing of desire for uniformity in tariff provisions. Moreover, shippers or dealers, whose interests are not to be considered subordinate to others, avail themselves of mixtures now in effect, and desire of other dealers to bring about purchases from them is no warrant for increasing transportation burden to be borne by consumers. Iron and Steel Articles to Southwest, 31.

ADVANCE IN RATES—Continued.

Wool in the grease: Proposed increased rates on South American and Australian imported wool in the grease, in machine-compressed bales, from Boston, Lowell, New London, and New York, to La Porte and Mishawaka, Ind., found justified. Wool in the grease, in bales of the same density as South American and Australian wool, move under higher rates from Boston and New York to all points of consumption in official territory. Present rate to La Porte, although fixed by commission, is low and gives undue preference to South American and Australian wool as against wool imported from other foreign countries, and as against domestic wool, and unduly prefers La Porte as against other consuming points in official territory. Imported Wool from Boston and New York, 26.

ADVANTAGES AND DISADVANTAGES.

Commission would not be justified in attempting to neutralize disadvantages of geographical location by requiring wasteful or additional service without adequate compensation, although shipper may be in dire need. Flory Milling Co. v. C. N. E. Ry., 129 (134).

Rates on clean rice from milling points in Arkansas to certain destinations in c. f. a., southern, and western territories, to western termini of trunk-line territory, and to points in Oklahoma, found unreasonable and unduly prejudicial in some instances as compared with corresponding rates from New Orleans, Memphis, and interior Louisiana points. Carriers in making rates have largely ignored distances in an effort to somewhat equalize conditions. Right of complainants to natural advantages of their location can not be taken away by rate adjustments and wide differences in distance between the various fields to common destinations must be recognized. Reasonable and nonprejudicial rates and bases prescribed. Stuttgart Rice Mill Co. v. A. & V., 517.

AGENT.

A carrier delivering shipments to industries on its line, charges for which are absorbed by initial carrier, may be looked upon as an agent of the latter, in that it is completing a service which initial carrier has taken upon itself to perform. Peoria & Pekin Union Ry., 3 (16).

AGGREGATE OF INTERMEDIATES. See THROUGH AND LOCAL.

AGREEMENTS. See CONTRACTS AND AGREEMENTS.

ALLOWANCES.

Rates on stable manure from Jersey City, on ex-water traffic originating in New York, increased following general rate advances, by applying percentage increases to gross rate, including allowance for water ferriage, instead of first deducting such allowance and applying increases to net rates, found not unreasonable or unduly prejudicial. Reasonableness of rates charged, and not strict conformity with prescribed method of making percentage increases in their predecessors, is the controlling consideration. See 57 I. C. C. 723 and other cited cases. Moreover, rates complained of were increased in same manner as all other rates which reflected allowances, and no reason appears for making an exception to that method in this instance. N. Y. Stable Manure Co. v. Director General, 349.

ALLOWANCES—Continued.

Divisions and allowances accorded Christie & Eastern Ry., a common-carrier tap line, by trunk-line connections, out of joint rates on lumber and forest products, found not unjust, unreasonable, inequitable, or otherwise unlawful. The Christie originally connected with but a single trunk line at Sandel but by extending its service under trackage rights additional outlets were established at Lecompte and Long Leaf. *Held*: Hauling traffic through Long Leaf or Lecompte, instead of to less distant connection at Sandel, is an unnecessary and uneconomic service and not in the public interest. Service, as extended, falls under the ban of inefficiency since it entails a burden of expense voluntarily assumed which can not be overcome by increased volume of traffic. Moreover, such unnecessary expense should not be offset by depleting revenues of trunk-line connections. *Christie & Eastern Ry. v. K. C. S.*, 675.

ALTERNATIVE RATES.

Rates on steel grinding balls moving water-and-rail from Chrome, N. J., to Ada, Okla., via Galveston, found not unreasonable or in violation of aggregate-of-intermediates clause of section 4 of the act. Tariffs in effect provided for alternative application of maximum rates, whereby rates to Deming, N. Mex., and Clifton, Ariz., would apply if lower than rate to Ada. The Clifton and Deming rates, however, were restricted to routes other than route of movement, and application of the alternative rule was contingent upon specific reference being made to it in connection with rates to destinations in the tariff, and no such reference was made in connection with rate to Ada. Moreover, rate from point of origin to Deming was higher than rate to Ada. *Oklahoma Portland Cement Co. v. A., T. & S. F.*, 203.

AMENDMENT OF COMPLAINT.

Home Accident & Insurance Co. assumed direction of complainants' business and selected a general manager who paid freight charges in complainants' name on shipments consigned to him individually and to a road commissioner from funds advanced by the insurance company. Identity of complainants' company was maintained and all items of expense and merchandise charged to it. Defendants contended that complainants were not real parties in interest, so complainants' counsel moved to amend complaint by making insurance company a party complainant. This was permitted subject to defendants' objections. *Held*: Under facts stated complainant is entitled to reparation and since insurance company presented no adverse claim, it is unnecessary to pass upon motion to amend. *Edwards Construction Co. v. J., L. C. & E.*, 370 (371-372).

ANALOGOUS ARTICLES. *See also* COMPARATIVE RATES.

The so-called analogy rule has no application where a commodity is clearly and definitely covered by a provision of the classification. *Friedlander case*, 85 I. C. C. 465. *Toledo Cooker Co. v. N. & A. Ry.*, 271 (272).

ANALOGOUS ARTICLES—Continued.

At time of movement there was no specific rate or rating on "earthenware jugs, insulated and metal jacketed," and under analogous article rule rate applicable on "jugs," glass, insulated and metal jacketed," was assessed. Contemporaneously lower rates applied on "pottery, earthenware, stoneware, common brown or gray jugware." *Found:* An earthenware jug, when insulated and metal jacketed, completely loses its identity as an ordinary earthenware jug or jar and value of insulated metal-jacketed articles greatly exceeds that of ordinary earthenware jugs. Article under consideration does not fall within generic term "pottery, earthenware, stoneware, common brown or gray jugware," and rate charged was applicable. *Cullum & Boren Co. v. C., B. & Q.*, 354.

Complainant contended that class rate assessed under analogous article rule of the classification was inapplicable, and that under terms of that rule lower commodity rate should have been charged, *Held:* Language of analogous article rule definitely restricts its application to the *classification* of commodities, and can not be used to determine application of commodity rates carried in commodity tariffs. Moreover, rule 6(b) of Tariff Circular 18-A provides that "commodity rates must be specific and must not be applied to analogous articles." *Id.* (355).

ANY QUANTITY RATES.

Proposed increased rates on cotton piece goods, any quantity, from Texas and Oklahoma points to St. Louis and points in defined territories, published to comply with order entered in connection with *Memphis-Southwestern Investigation*, 77 I. C. C. 473, denying fourth-section relief, found not justified. Respondents made no attempt to justify the increases but merely stated that they were forced to make the revision to comply with the fourth-section order. However, such compliance does not require substantial increases proposed, and respondents' revenues would not be reduced to any extent by application from intermediate points of present rate from Texas producing points. *Commodity Rates from Southwestern Points*, 394 (396).

APPEARANCES.

Upon contention that burden of proof to justify rates increased since January 1, 1910, was not met by defendants due to their nonappearance at the hearing, and that complainant is, therefore, entitled to an award of reparation on shipments moving under rates as increased, *Held:* Before commission can find that a shipper is entitled to reparation it must find that the rate is unreasonable, and fact that no evidence was offered on behalf of carriers does not preclude commission from determining whether or not the rate was in fact unreasonable. *Nebraska Bridge Supply & Lbr. Co. v. A., T. & S. F.*, 301 (303).

ARBITRARIES. *See* CONSTRUCTIVE MILEAGE; DIFFERENTIALS; SPREAD OF RATES.

ASSIGNED CARS. *See* CAR DISTRIBUTION.

ASSIGNMENT.

Prior to filing of complaint, assets and liabilities of complainant were assumed by a successor company whose interest was not disclosed until after statute of limitations had run. Upon contention that motion to join successor in interest as co-complainant comes too late, and that lack of interest precludes a recovery of reparation by complainant, *Held*: Following *Plymouth Coal Co.*, 56 I. C. C. 699, if complainant is party injured by a violation of the act the award of reparation should be made in its favor, and it may not be denied reparation because of an assignment *pendente lite* under which no adverse rights are asserted. Fact that assignment took place prior to filing of complaint warrants no different conclusion. See 68 I. C. C. 138; 83 I. C. C. 557. *Delta Beet Sugar Corp. v. Director General*, 547 (549-550); *Same v. Same*, 551 (553-554).

BASE PRICE.

Basic price of spelter, irrespective of point of production, is fixed by the East St. Louis market. *Athletic Mining & Smelting Co. v. K. C. S.*, 119 (120).

BLANKET RATES. See GROUPS AND BLANKETS.

BOTH DIRECTIONS.

Upon further consideration, original report, 83 I. C. C. 525, reversed, and rate on rubber arctics from Seattle to Omaha found unreasonable to extent it exceeded rate in opposite direction. Rates on various other commodities between Seattle and Omaha are the same in both directions, and commission has frequently given weight to existing voluntary rates in opposite directions when no material difference in transportation conditions exist. *Portland Traffic & Transportation Asso.*, 56 I. C. C. 410, and other cases cited. Reparation awarded. *Hayward Bros. Shoe Co. v. C., M. & St. P.*, 243.

Combination fifth-class rates based on Ohio River crossings assessed on sporadic shipments of canned meats (surplus Army stock) moving from Atlanta to Chicago, found not unreasonable as compared with lower commodity rates on other canned goods, or with rate on the complete canned-goods list, including meats, vegetables, fruits, etc., southbound from Ohio River crossings to Atlanta. The probability of any traffic northbound other than sporadic shipments is remote, and a northbound commodity rate south of the Ohio on these shipments as low as that applicable in the reverse direction, under which traffic moves regularly, does not seem justified. *Armour & Co. v. L. & N.*, 360.

Rate on returned paper-winding cores found unreasonable to extent it exceeded rate contemporaneously in effect on newsprint paper. Subsequent to movement carrier provided in its tariff that rate on cores returned to mill point from which originally shipped wound with paper would not exceed the rate on newsprint paper in reverse direction. Reparation awarded. *Nelson Estate v. C., M. & St. P.*, 607.

BRANCH AND SHORT LINE POINTS.

Rates on zinc ore from points in Oklahoma on Miami Mineral Belt and Northeast Oklahoma railroads, and from trunk-line and junction producing points in Missouri, Kansas, and Oklahoma, to South Fort Smith, Ark., found not unreasonable but unduly prejudicial in favor of competitors operating zinc-smelting plants at Collinsville, East St. Louis, La Salle, Peoria, and Chicago, Ill., and Grasselli, Ind., to extent that factors of above-named carriers exceeded by more than 0.5 cent the contemporaneous factors on like traffic to the preferred plants. Nonprejudicial basis of rates prescribed. *Athletic Mining & Smelting Co. v. K. C. S.*, 119.

BRANCH AND SHORT LINE POINTS—Continued.

Rates on solvent naphtha, a coal-tar product, l. c. l., from Minnequa, Colo., to Johannesburg, Calif., a branch-line point, based upon an arbitrary over Kramer, Calif., the junction point, found not unreasonable or otherwise unlawful. *California Rand Silver v. C. & N. W.*, 197.

Rates on lumber from Group 12 points on the Guyandotte branch of the C. & O. in West Virginia to destinations in c. f. a. territory and in Canada found not unreasonable or unduly prejudicial as compared with lower rates to same destinations from points in Groups 11 and 13 on the Coal River branch. While through distances from the respective groups are substantially the same, differentials over the junction point rates to Group 12 are higher than those to Groups 11 and 13, but it can not be found that rates assailed are unreasonable because of present variations. *Peytona Lbr. Co. v. C. & O.*, 363.

Following *Jones & Laughlin Steel Co.*, 91 I. C. C. 300, reparation awarded complainants and interveners in respect of interstate shipments on which they paid charges of the Monongahela Connecting, South Buffalo, and Union railroads, in addition to district rates of trunk-line connections, defendants having failed to justify increased rates during nonabsorption period in so far as they resulted in transportation charges exceeding those contemporaneously in effect to and from trunk-line points in the same rate districts, aggregate charges applicable during the period of non-absorption having been found unreasonable to that extent in the cited case. *Jones & Laughlin Steel Co. v. P. & L. E.*, 637.

BREAK-UP SERVICE. See MAKE-UP AND BREAK-UP SERVICE.

BULKY ARTICLES. See LIGHT AND BULKY ARTICLES.

BURDEN OF PROOF. See also PROOF AND EVIDENCE.

Upon contention that burden of proof to justify rates increased since January 1, 1910, was not met by defendants due to their nonappearance at the hearing, and that complainant is, therefore, entitled to an award of reparation on shipments moving under rates as increased, *Held*: Before commission can find that a shipper is entitled to reparation it must find that the rate is unreasonable, and fact that no evidence was offered on behalf of carriers does not preclude commission from determining whether or not the rate was in fact unreasonable. *Nebraska Bridge Supply & Lbr. Co. v. A., T. & S. F.*, 301 (303).

BURDEN OF TRANSPORTATION.

It does not follow from fact that commission has approved increases in handling charges at certain ports that a lower basis of charges would have been unlawful. Carriers may, subject to certain restrictions, initiate rates lower than commission may prescribe. The question is as to whether or not they are proposing to go to such lengths in attempting to meet competition and attract business that resulting charges will be so low as to create a burden upon other traffic. *Handling Charges on Cement, Fertilizer, and Salt*, 640 (644).

CANADA. See ADJACENT FOREIGN COUNTRY.

CAR DISTRIBUTION.

Findings in former report, 80 I. C. C. 520, that practice of carriers in assigning private cars, and system or foreign-line cars for railway fuel, to bituminous-coal mines in excess of ratable share contemporaneously distributed to bituminous-coal mines upon their lines, which do not receive assigned cars, was unjust, unreasonable, discriminatory, and unduly prejudicial to mines not receiving assigned cars in favor of mines furnished such cars in excess of ratable proportion, and that cars specially placed by order of the commission under provisions of section 1 (15) of the act may properly be treated as assigned cars, and need not be taken into account in determining ratable distribution when order of placement so requires, affirmed. Assigned Cars for Bituminous Coal Mines, 701. The commission's authority over distribution of cars of carriers subject to the act is to be found in sections 1, 3, and 15. Section 1 requires rules of car distribution to be reasonable, section 3 prohibits them from being unduly preferential or prejudicial, and sections 1 and 15 authorize commission to prescribe just and reasonable rules. Provisions of these sections clearly indicate the broad scope of authority which Congress has conferred upon the commission, and the important duties with which it is charged, to require, in time of car shortage, a just and equal distribution of cars and prevention of a distribution which is unjust and discriminatory. *U. S. v. New River Co.*, 265 U. S. 533. Id. (714).

Upon contention that under section 1 (12) of the act the commission has no jurisdiction over distribution of cars to carrier-owned or output-contract mines which furnish railway fuel exclusively for at least six months, because such mines are not "served" by a carrier, *Held*: Word "served" has no judicially determined or technical meaning which would make it inapplicable to such mines. The commission believes that Congress intended to use the word in its ordinary and well-accepted meaning, i. e., to mean the furnishing of cars by a carrier at its own mines or at those the output of which it takes. As used in paragraph (12) "served" is a convenient term to show that provisions of this paragraph apply not only to mines located on a carrier's own line, regardless of ownership or contractual arrangements, but also to those mines located off its line and which it customarily supplies with cars. Id. (714-715).

Section 1 (12) of the act held to apply to cars placed at carrier-owned and output-contract mines, and can not be relied upon to show that Congress exempted such cars from other provisions of section 1 requiring reasonable rules of distribution, and provisions of section 3 prohibiting unduly preferential or prejudicial rules. Id. (716).

Assigned-car mines which furnish their output for long periods of time to railroads are, at end of such periods, because of lower costs and better labor conditions, in a position to undersell competing unassigned-car mines. Railroad-owned mines in many instances sell coal commercially and may not only dispose of their product commercially, but they may be leased or sold to outside interests, and thus actively engage in selling commercial coal. Moreover, there is competition in labor between railroad-owned and output-contract mines on the one hand and commercial mines on the other. The commission thinks, therefore, that it has jurisdiction to deal with the distribution of cars to all of such mines under section 3 of the act, competition not being an essential element under section 1. *Penn Tobacco Co.*, 18 I. C. C. 197, 200. Id. (717).

CAR DISTRIBUTION—Continued.

Fundamental purpose of the act is equality of treatment in rates and service, and this principle may not be violated merely because carrier in that way may operate at less expense. If this were not true a carrier in times of car shortage could restrict its car supply to a few large and well-operated mines on its line and ignore remainder. A carrier's self-interest may not override requirement of equality in car distribution. See 263 U. S. 515, 523; 225 U. S. 326. Id. (721).

The question of a just and nondiscriminatory car distribution rule under provisions of sections 1 and 3 of the act is a different question from that of a rule to be prescribed in case of emergency. The distinction is recognized in section 1 (15) where it is provided that the commission may suspend car service rules at such times. Id. (724).

Contention that elimination of the so-called assigned-car rule of car distribution would be an unwarranted interference by commission with carriers' right to purchase coal where and from whom they please, not sustained following *Illinois Central case*, 215 U. S. 477, in which the court said "The right to buy is one thing and power to use equipment of the road for purpose of moving articles purchased in such a way as to discriminate or give preference are wholly distinct and different things." Id. (725).

Upon contention that commission is without jurisdiction over distribution of special types of equipment used exclusively in hauling company fuel because such equipment has never been impressed with character of common-carrier instrumentalities, such equipment is not used in commerce at all, but only in performing private work of a railroad company, *Held*: Such special types were in commercial service before being put in fuel-coal service, are placed at partial-output mines selling commercial coal, are counted and distributed on a pro rata basis, and may be unloaded like ordinary coal cars. They constitute part of the available equipment of these carriers for commercial shipments, and fall within class of equipment as to which Congress requires "a just and equal distribution and prevention of an unjust and discriminatory one." *Illinois Central case*, 215 U. S. 452, 474. Id. (725).

Contention that section 1 (12) of the act, which was incorporated by the transportation act, 1920, limits the commission's power to change or extend by further limitation the rule of car distribution laid down in the *Traer case*, 13 I. C. C. 431, and *Hocking Valley case*, 12 I. C. C. 398, not sustained. That this was not the intent of Congress is clear. In *United States v. P. R. R. Co.*, 69 L. Ed. 76, the court said that there was nothing in the interstate commerce act as originally enacted, or in the transportation act, or in any earlier amendment, which indicates a purpose on the part of Congress either to allow a carrier to create undue prejudice by use of facilities possessed, or to narrow the commission's powers to prevent unjust discrimination. Id. (730).

In determining upon a just and workable car distribution rule, the commission must recognize the fact that car shortages result from a general shortage in facilities, including terminals, motive power, etc., and that to permit private-car owners to have their cars placed at designated mines in excess of the pro rata allotment means that private-car owners will receive more than their fair share of those transportation facilities which they do not own, while to require pro rata distribution of cars is to bring about a just and nonpreferential distribution in conformity with fundamental requirements of the act. Id. (732).

CAR DISTRIBUTION—Continued.

Contention that use of private cars during car-shortage periods releases railroad cars for commercial mines, which otherwise would have to be placed at private-car mines overlooks fact that particularly in time of shortage the mine operator is entitled to an equitable rationing of the transportation facilities which are at hand, and that equality is vastly more important to him than a slight addition to his allotment effectuated by giving his neighbor and competitor a better car supply. Furthermore, if private cars should be withdrawn from carrier service and remaining supply should be inadequate, the commission has power under the act to require carriers to furnish an adequate supply. *Id.* (736-737).

Fact that large sums may have been invested in reliance upon a rule of car distribution which is unreasonable and unjustly discriminatory or may become or be found so under the act does not mean that the commission is powerless to change the rule and prescribe a just and non-preferential one. *Douglas case*, 21 I. C. C. 97, 101; *So. Pac. Co. v. I. C. C.*, 219 U. S. 433; *Mottley case*, 219 U. S. 467. *Id.* (737).

CAR FERRIES.

Upon investigation by commission on its own motion, *Found*: That for performing car ferry service in crossing the Mississippi River, the addition of 20 constructive miles to distances from west-bank points in determining charges for transportation of articles taking class or commodity rates, computed on basis of interstate distance scales to and from Vicksburg and Natchez, Miss., Angola, North Baton Rouge, Harahan, and New Orleans, La., is unreasonable. Reasonable ferry tolls, based upon arbitraries added to distance rates from and to west-bank points, prescribed for future. Mileage for Mississippi Crossings, 462.

Considerations both of cost of performing car ferry service at lower Mississippi River crossings, and value thereof to shippers, lead to conclusion that additional cost should be borne, as nearly as may be, by traffic accommodated, and not imposed upon shippers elsewhere whose traffic is carried under less costly circumstances. *Id.* (475).

Method of employing arbitraries is more reasonable, and less likely to result in undue or unreasonable prejudice or disadvantages to persons, localities, or descriptions of traffic, than method of adding 20 constructive miles to actual distance in computing charges for car ferry service at lower Mississippi River crossings. *Id.* (475).

Shipment delivered to carrier unrouted. Tariff provided two routes carrying proportionals, the higher applying "all-rail," the lower "rail-lake-and-rail." Carriers forwarded shipment all-rail and assessed higher proportional. *Held*: Misrouting resulted as carriers operated car-ferry routes over which lower "rail-lake-and-rail" proportional applied. A car-ferry route is an "all-rail" route, and expression "rail-lake-and-rail route" describes a rail-and-water break-bulk route. Such terms, however, were not so used in the tariff, no steamship line being named as a participating carrier, thus rendering the rail-lake-and-rail rate inapplicable over a break-bulk route. Expression "rail-lake-and-rail" merely distinguished car-ferry routes from those literally all-rail, and it was carriers' duty, in absence of instructions, to have forwarded over the lower-rated car-ferry route. Reparation awarded. *Bergstrom Paper Co. v. Director*, 591.

Strictly speaking, a car-ferry route is an "all-rail" route. *Id.* (592).

CAR FLOATAGE.

Rules, regulations, and practices of C. R. R. Co. of N. J., under which it refuses to float shipments of cast-iron soil pipe from Jersey City to its North River piers, Manhattan Island, N. Y., and requiring shippers to take delivery at former point, found unreasonable. Iron pipe, due chiefly to amount of time required to unload, may be undesirable traffic at pier stations, but defendant does not similarly restrict other substantially similar commodities which are bulky and difficult to handle, and nothing of record indicates that latter should be accorded more favorable rules respecting delivery than cast-iron soil pipe. *Somerville Iron Works v. C. R. R. Co. of N. J.*, 39.

CAR FURNISHING. *See* TWO-FOR-ONE.**CAR SHORTAGE.**

Storage of coal by railroads and others in periods of car surplus tends to equalize demands by operators on railway equipment throughout the year, and to prevent periods of extreme car shortage during which, because of the great demand for coal, inefficient high-cost mines spring into operation, and the public is required to pay excessive prices for coal. Assigned Cars for Bituminous Coal Mines, 701 (724).

Report of American Ry. Asso. conference committee to United States Coal Commission, defining what constitutes a "car shortage." *Id.* (731).

A shortage in cars usually if not invariably is accompanied by a shortage in some one or more of the other facilities of carriers. Locomotives, tracks, employees, terminal facilities, etc., are so related to number of cars in service that an excessive demand for cars places an excessive burden upon such other facilities. *Id.* (731).

In determining upon a just and workable car distribution rule, the commission must recognize fact that car shortages result from a general shortage in facilities, including terminals, motive power, etc., and that to permit private-car owners to have their cars placed at designated mines in excess of the pro rata allotment means that private-car owners will receive more than their fair share of those transportation facilities which they do not own, while to require pro rata distribution of cars is to bring about a just and nonpreferential distribution in conformity with fundamental requirements of the act. *Id.* (732).

Contention that use of private cars during car-shortage periods releases railroad cars for commercial mines, which otherwise would have to be placed at private-car mines overlooks fact that particularly in time of shortage the mine operator is entitled to an equitable rationing of transportation facilities at hand, and that equality is vastly more important to him than a slight addition to his allotment effectuated by giving his neighbor and competitor a better car supply. Furthermore, if private cars should be withdrawn from carrier service and remaining supply should be inadequate, the commission has power under the act to require carriers to furnish an adequate supply. *Id.* (736-737).

CAR SPOTTING. *See* SPOTTING CARS.

CIRCUITOUS ROUTES. *See also* ROUTES AND ROUTING; MISROUTING.

Shipment of lumber from Lonoke, Ark., was originally consigned to Deer Creek, Okla. Diversion requested to Nowata, Okla., could not be effected until after shipment passed point through which the short line route made. Combination rates based on Winfield, Kans., assessed found not unreasonable as compared with rates contemporaneously in effect via the direct route; nor were individual factors comprising the combination unreasonable as compared with rates between other points instanced by complainant. Shipment here involved was unusual and moved over the circuitous route at instance and for convenience of complainant. While ton-mile earnings thereunder are somewhat higher than those instanced, they can not be said to have been excessive for service performed. *Nebraska Bridge Supply Co. v. A., T. & S. F.*, 301.

Fourth section relief granted by authorizing carriers to establish and maintain by all routes between Fort Worth, Wichita, Kansas City, St. Joseph, St. Louis, and Oklahoma City, on the one hand, and various interstate destinations on the other, the lowest rates on horses and mules prescribed as maximum rates over any route between said points, and to maintain higher rates from, to, or between intermediate points, provided that rates from, to, or between the intermediate points shall not exceed rates prescribed as maximum and in no case exceed the lowest combination. *Horse and Mule Rates in the Southwest, 1924*, 479.

CLASS AND COMMODITY RATES.

Complainant contended that class rate assessed under analogous article rule of the classification was inapplicable, and that under terms of that rule lower commodity rate should have been charged. *Held*: Language of analogous article rule definitely restricts its application to *classification* of commodities, and can not be used to determine application of commodity rates carried in commodity tariffs. Moreover, rule 6(b) of Tariff Circular 18-A provides that "Commodity rates must be specific and must not be applied to analogous articles." *Cullum & Boren Co. v. C., B. & Q.*, 354 (355).

Exceptions to the governing classifications, as well as commodity rates are usually established only when there is a considerable volume of movement in particular channels. *Indian Packing Corp. v. Director General*, 400 (404).

Upon contention that class rates are properly applicable on isolated shipments in lieu of commodity rates as latter are established to take care of sustained movements, *Held*: Shippers are entitled to reasonable rates, and fact that there have been relatively few shipments of a commodity between certain points is not the sole determinative factor. *Parkersburg Rig & Reel Co. v. M. P.*, 667 (669).

Second-class express rates on cream, in 10-gallon cans, from Albion and Dallas Center, Iowa, to Omaha, found unreasonable to extent they exceeded commodity distance rates subsequently established. Reparation awarded. *Fairmont Creamery Co. v. Am. Ry. Exp. Co.*, 684.

Where the classification provides a specific rating on an article, a broad description used in connection with a lower commodity rate under which such article may be included does not take it out of the classification. *Cleveland Akron Bag Co. v. W. & L. E. Ry.*, 694 (695).

CLASSIFICATION.

In General:

The so-called analogy rule has no application where a commodity is clearly and definitely covered by a provision of the classification. *Friedlander case*, 85 I. C. C. 465. *Toledo Cooker Co. v. N. & A. Ry.*, 271 (272).

Exceptions to the governing classifications, as well as commodity rates, are usually established only when there is a considerable volume of movement in particular channels. *Indian Packing Corp. v. Director General*, 400 (404).

Varying shades of difference in classification elements can not be translated into ratings with mathematical accuracy, especially where number of ratings in the classification is limited; and no classification can be so minute as to conform to all differing varieties and conditions of traffic. The commission can do no more than exercise its best judgment in an effort to give proper weight to all evidence and with due regard to interests of shippers, carriers, and the public generally. *Id.* (408).

Trend of freight classification for many years, and probably since the beginning, has been toward multiplication and refinement of commodity descriptions. The consolidated classification to-day provides specific ratings for thousands of articles, and for most of them there are several ratings, application of which depends upon form in which the article is prepared for shipment. Many of these ratings are not precisely correct, some of them doubtless not even reasonably correct; but they were all established in the first instance with some regard for value, weight density, susceptibility to damage, and other transportation characteristics of the commodity under consideration. *Parlor Frame Mfrs. Asso. v. A. A. R. R.*, 506 (508-509).

In establishment of freight classifications, involving as it does the grouping of all commodities into a limited number of classes, principle that the unfinished should be rated lower than the finished article must frequently yield to other considerations. *Id.* (510).

Beef, dried: Upon rehearing, findings in original report, 64 I. C. C. 205, prescribing third class rating on sliced dried beef, in glass, l. c. l., modified, and rating not in excess of first numbered class above the l. c. l., rating contemporaneously applicable on the same commodity in metal cans found reasonable. Reparation denied. *Indian Packing Corp. v. Director General*, 400.

Canned goods: Official classification ratings on peanut butter; butter, sugar or corn sirup and sugar combined; comb or strained honey; honey and sugar mixtures; olive oil; ground spices; and vinegar, in glass, packed in barrels or boxes; l. c. l., found not unreasonable; but similar ratings in said classification on olives; mince meat; pickles and table sauces, n. o. i. b. n.; fish, other than fresh; preserved fruit; fruit butter; crushed fruit; fruit jam; fruit jelly; fruit pulp; edible jams, jellies, or preserves, n. o. i. b. n.; and corn sirup jelly, in glass, found unreasonable to extent they exceed the first numbered class above the l. c. l. ratings contemporaneously applicable on the same articles in metal cans. *Indian Packing Corp. v. Director General*, 400.

CLASSIFICATION—Continued.

Files, used or worn-out: Application of existing classification ratings on steel files, l. c. l., to shipments of used or worn files, returned for reconditioning, found not unreasonable or otherwise unlawful. Practice of applying same rating on used as on new files extends to all other kinds of tools and machinery, such as agricultural implements, etc. and many of such articles are shipped secondhand or are returned to manufacturers for repairs or reconstruction. Moreover, in *Minneapolis Traffic Asso.*, 23 I. C. C. 432, 437, the commission pointed out difficulties which would be encountered in the practical application of different rates on old and on new articles of same kind. *Continental File Co. v. P., C., C. & St. L.*, 373.

Frames, chair and lounge:

Considering superior protection against damage which crating affords, and considering also that furniture frames are unfinished material, *Found*: That l. c. l. rating in official classification on wooden chair and lounge frames, when set up, in boxes or crates, is unreasonable for future to extent it exceeds $2\frac{1}{2}$ times first class. *Parlor frame Mfrs. Asso. v. A. A. R. R.*, 506.

L. c. l. ratings on set-up wooden chair and lounge frames, when in boxes, crates, bundles, or loose, in western and southern classifications, and when loose or in bundles in official classification; also the c. l. rating on such frames, loose or in packages, in official classification, found not unreasonable or otherwise unlawful. *Id.* (506).

Jugs, insulated and metal jacketed: Rate of $1\frac{1}{2}$ times first class applicable on "jugs, glass, insulated and metal jacketed," and under analogous article rule of the governing classification assessed on earthenware jugs, insulated and metal jacketed, found unreasonable to extent it exceeded fourth class subsequently established when classification was amended so that same rating applied to the commodity whether of glass or earthenware. Glass and earthenware jugs, insulated and metal jacketed, are adapted to similar uses, both have similar transportation characteristics, and are competitive. Reparation awarded. *Cullum & Boren Co. v. C., B. & Q.*, 354.

Light and bulky articles: Having regard for difference in structure of freight and express classifications, the commission can not predicate a condemnation of the freight rate for a light and bulky article like furniture frames solely upon a showing that express rates are lower between many points. *Parlor Frame Mfrs. Asso. v. A. A. R. R.*, 506 (509).

Nursery stock: First-class express rating and rates on trees, n. o. s., and shrubs and branches thereof, found not unreasonable or unduly prejudicial as compared with second-class rating and rates on berry or vegetable plants, boxed or crated, or with materially lower l. c. l. freight rates on trees, shrubs, and vines under certain conditions of packing. No competition exists between trees and shrubs on the one hand and vegetable or berry plants on the other; no movement is shown under freight rates, nor is service rendered by express comparable with that by freight. *Asso. of Nurserymen v. Am. Ry. Exp.*, 166.

CLASSIFICATION TERRITORIES.

Quite generally the rate levels in the Southwest are somewhat higher than in the Southeast. Horse and Mule Rates in the Southwest, 1924, 479 (489).

CLASS RATES. See CLASS AND COMMODITY RATES.

COMBINATION RATES.

Shipments moved under combination rates and charges were collected on basis of separate components. Tariff of one participating carrier contained the combination rule, which provided a method for constructing through rates made on combinations, but other participating carrier made no reference to the rule nor carried a similar rule in its tariff. Nor did tariff containing the rule specifically restrict its application so as to render it inoperative in connection with traffic here involved. *Held*: Carrier publishing the rule must protect the aggregate rate constructed in conformity therewith, and other carrier is entitled to retain its full local. Refund of overcharges directed. *Armour Fertilizer Works v. S. Ry.*, 186.

Shipments moved under combination rates. Tariff governing second component carried the combination rule which provided a method for constructing through rates made on combination. Tariff of originating carrier carried no similar rule, nor made reference to any tariff in which such rule was carried. *Held*: There was a holding out to shipper of rates constructed in accordance with the rule which publishing carrier must protect. See *Sligo case*, 62 I. C. C. 643. Reparation awarded. *California Cotton & Factorage Co. v. Director General*, 260.

Proposal to restrict application of the combination rule so that it will apply only where all issues publishing factors used in arriving at through rates from origin to destination carry reference to the rule and authorize an affirmative application thereof, found not justified. Carriers made no effort to justify increased rates, which would result in instances where the rule is published in a separate combination tariff and no reference is made thereto in connection with one factor of a combination, although such reference is made in connection with other factors. While commission has repeatedly sanctioned efforts to eliminate the rule by publication in its stead of joint or proportional rates, it has denied authority to cancel it where unjustified increases would result. Combination Rule on Lumber, 279.

Direct reference in rate tariffs to the combination rule in a combination tariff in effect makes such a rule a part of the former just as definitely as though it were published therein, and principle announced in the *Sligo case*, 62 I. C. C. 643; 73 I. C. C. 551, is controlling. *Id.* (280).

Carriers stress fact that in several reports the commission has commented upon undesirability of the combination rule from a tariff standpoint, and refer to cooperation and suggestions of the Bureau of Traffic looking to the ultimate elimination of the combination tariff. *Found*: Suggestions did not contemplate increases in rates, for which no sound justification is offered, by cancellation of the rule. *Id.* (281).

Shipments moved under combination rates, each factor of which was increased under General Order No. 28 of director general. Tariff of one participating carrier contained the combination rule which provided a method for constructing through rates made on combination, which rule was not published in tariff of other participating carrier until after shipments moved. *Held*: Where one tariff used in making combination rates on through shipments contains a rule that such rates will be subject to a single increase, there is a holding out to shipper of rate so constructed which publishing carrier must protect. *Sligo Iron Store Co.*, 62 I. C. C. 643; 73 I. C. C. 551. Shipments found overcharged and reparation awarded. *Southwestern Shipbuilding Co. v. Director General*, 337.

COMBINATION RATES—Continued.

Proposal of carriers in c. f. a. territory to restrict application of combination rule on livestock so that it will only apply where all factors used in arriving at through rates from origin to ultimate destination carry reference thereto and authorize an affirmative application thereof, found not justified. Such restriction would not merely relieve respondents of assumption of deductions from western lines' separately established rates, but also from their own, since the rule would not apply where any carrier in the through route did not make appropriate reference thereto. This would result in increased charges, the burden of justifying which rests upon respondents. Moreover, from some origin points tariffs of western carriers still refer to the rule, and an inadmissible result of the restriction would be to make rates to be applied by respondent eastern lines depend upon separate tariffs of western lines. This would not accord with requirements of section 6 of the act. *Combination Rule on Livestock*, 458.

The combination rule originated with the Director General of Railroads and was adopted as a corrective expedient whereby combination through rates on certain commodities, each factor of which had theretofore received a flat increase under General Order No. 28, were so amended as to reflect the same single increases as were applied to equivalent joint rates. *Id.* (459).

On shipments moving during Federal control charges were collected on basis of a combination rate both factors of which had been increased under General Order No. 28 of director general. Tariff carrying one factor contained a provision that where charges on through continuous movements were based on combinations of separately established rates the increases authorized by the general order should be applied to the combination in effect on June 24, 1918. *Held*: Following *Sligo Iron Store Co.*, 62 I. C. C. 643; 73 I. C. C. 551, a through combination plus a single increase was applicable on the shipments, and they were accordingly overcharged. *Delta Beet Sugar Corp. v. Director General*, 547.

Joint rates from points in Florida to Omaha, to which were applied the inter-territorial increases of $33\frac{1}{3}$ per cent authorized in *Increased Rates, 1920*, 58 I. C. C. 220, in lieu of the territorial increases based on rates to and from Jacksonville, found not unreasonable or in violation of the aggregate-of-intermediates provision of section 4 of the act. Situation presents a "special and unusual circumstance" sufficient to justify a departure from a strict application of the rule laid down in *Windsor Turned Goods Co.*, 18 I. C. C. 162, that the fair measure of reasonableness of a joint rate that exceeds the combination of locals is the lowest combination that would apply if the joint rate were canceled. Moreover, it is not a fair application of the rule to condemn these joint rates as unreasonable inasmuch as no compensatory advantage is accorded when the situation is reversed. *Omaha Chamber of Commerce v. A., B. & A.*, 583.

Former report, 81 I. C. C. 745, in which proposed cancellation of the combination rule for constructing combination rates on lumber between southern points and Ohio and Mississippi River crossings, and proposed restriction of routing over Atlantic Coast Line from southern points to Virginia gateways were found not justified, affirmed upon reargument. Carriers made no attempt to justify increased rates which would result; moreover, the tariff provision does not fully conform to requirements of section 6 of the act, and is objectionable in that restriction proposed makes necessary a search of other tariffs in order to determine whether there are joint rates over any route before it can be determined whether the combination rule is applicable. *Cancellation Rule for Combination Rates*, 614.

COMBINATION RATES—Continued.

The commission has no desire to continue indefinitely operation of the so-called combination rule, but on contrary feels that carriers should use all due diligence in eliminating that rule from their tariffs as it is not a desirable method of publication or one which fully meets requirements of section 6 of the act. *Id.* (615).

Mere desire to eliminate the combination rule is not a justification for increased rates. *Id.* (615).

COMMERCIAL COMPETITION. *See* COMPETITION.COMMODITY RATES. *See also* CLASS AND COMMODITY RATES.

Commodity rates from c. f. a. territory to Jackson, Miss., found not unreasonable, discriminatory, or unduly prejudicial as compared with those in effect to Vicksburg. *Jackson Traffic Bureau v. A., C. & Y.*, 339.

COMMON CARRIERS. *See also* TAP LINES.

Peoria & Pekin Union Ry. Co., found to be an independent common carrier subject to the act, and as such entitled to assess reasonable and otherwise lawful charges for transportation services which it renders, such charges to be filed and published in accordance with the provisions of section 6 of the act. *Peoria & Pekin Union Ry.*, 3 (22).

Holding that a particular industrial railroad is a common carrier means simply that it serves the public as well as the proprietary industry. It does not change the character of service performed for the proprietary industry. *Pressed Steel Car Co. v. Director General*, 224 (232).

COMPANY MATERIAL.

Upon contention that under section 1 (12) of the act the commission has no jurisdiction over distribution of cars to carrier-owned or output-contract mines which furnish railway fuel exclusively for at least six months, because such mines are not "served" by a carrier, *Held*: Word "served" has no judicially determined or technical meaning which would make it inapplicable to such mines. The commission believes that Congress intended to use the word in its ordinary and well-accepted meaning, i. e., to mean the furnishing of cars by a carrier at its own mines or at those the output of which it takes. As used in paragraph (12) "served" is a convenient term to show that provisions of this paragraph apply not only to mines located on a carrier's own line, regardless of ownership or contractual arrangements, but also to those mines located off its line and which it customarily supplies with cars. *Assigned Cars for Bituminous Coal Mines*, 701 (714-715).

The word "transportation" as used in section 1 (12) of the act is not limited in its meaning to transportation for compensation, but includes also transportation of the carrier's own coal over its line. *Id.* (715).

COMPARATIVE RATES. *See also* ANALOGOUS ARTICLES.

In General:

There should be a higher return to railroads for the carriage of express matter than they receive upon freight traffic, and while the two services are not directly comparable, it is proper to contrast charges exacted for lesser freight service with charges for transportation of the same articles in superior express service. *Parlor Frame Mfrs. Asso. v. A. A. R. R.*, 506 (508).

Mere rate comparisons without a showing of conditions under which rates were established, volume of movement, or that transportation circumstances and conditions are substantially similar, are not helpful in determining the reasonableness of rates on particular commodities. *Salt Lake Potash Co.*, 87 I. C. C. 695. *Chevrolet Motor Co. v. Director General*, 544 (546).

COMPARATIVE RATES—Continued.

In General—Continued.

Comparisons based upon distance alone have little probative value in measuring the reasonableness of rates. This is particularly true where rates compared are group rates in establishment of which element of distance must be subordinated to other considerations. *Louisville Cooperage Co. v. L. & N.*, 593 (594).

Bags and sacks, empty returned: Rates on, found unreasonable and unduly prejudicial as compared with lower rates on various other empty returned containers. *Oklahoma Portland Cement Co. v. A. & S. Ry.*, 605.

Bags, woven paper fabric: Class rate on, found unreasonable as compared with rates on numerous paper articles and to extent it exceeded lower commodity rate contemporaneously in effect on paper bags. Reparation awarded. *Cleveland Akron Bag Co. v. W. & L. E.*, 694.

Blocks, tank or furnace: Rate on, found unreasonable to extent it exceeded rate on fire brick. Tank or furnace blocks are fire brick of large size, they move on fire-brick rates in and between various territories, and rating in the three major classifications is the same on both commodities. Reasonable basis of rates prescribed and reparation awarded. *Chattanooga Bottle & Glass Mfg. Co. v. S. Ry.*, 71.

Box material: Rates on wire-bound box material found unduly prejudicial to extent they exceed rates contemporaneously applicable on box shooks. *Lange & Crist Box & Lbr. Co. v. B. & O.*, 207.

Cabbage: Rates on, in bulk, found not unreasonable or unduly prejudicial as compared with rates on potatoes or on mixed carloads of potatoes and other class C vegetables, including cabbage. Rates on cabbage and other class C vegetables in territory here involved are uniformly higher than on potatoes; no instance is cited where rates from point here involved are as low on cabbage as on potatoes; cabbage is more valuable, loads lighter, and is more difficult to protect from freezing; and rates assailed compare favorably, distance considered, with rates heretofore found not unreasonable or prescribed by commission. *Anderson Commission Co. v. C., R. I. & P.*, 241.

Cores, paper-winding: Rate on returned paper-winding cores found unreasonable to extent it exceeded the rate contemporaneously in effect on newsprint paper. Subsequent to movement carrier provided in its tariff that rate on cores returned to mill point from which originally shipped wound with paper would not exceed rate on newsprint paper in reverse direction. Reparation awarded. *Nelson Estate v. C., M. & St. P.*, 607.

Electrical appliances: Applicable class rates assessed on electrical heating and cooking appliances from Marion, Ind., to San Francisco, found not unreasonable, discriminatory, or unduly prejudicial as compared with lower commodity rates contemporaneously in effect on water heaters and other articles of a like or competitive nature, or with commodity rate subsequently established at complainant's request to assist it in competing with Pacific coast manufacturers. *Rutenber Electric Co. v. C., C. & St. L.*, 541.

Insulators: Rates on common pottery insulators, in barrels, found not unreasonable as compared with rates on wire nails, fruits and vegetables, glassware, and other commodities, the rates and earnings on which are not comparable with those on insulators. *Jackson Traffic Bureau v. B. & O.*, 342.

COMPARATIVE RATES—Continued.

Iron ore, ground: Rates on, found not unreasonable as compared with rates on crude iron ore. Crude iron ore is iron ore as it is mined, whereas ground iron ore is a manufactured product which when ground in oil becomes paint. Crude iron ore moves in open-top equipment, ground iron ore is shipped in paper sacks, and, in order to avoid damage in transit, is loaded in water-tight box-car equipment, free from nails and slivers. Circumstances and conditions surrounding transportation of these commodities are so dissimilar as to warrant lower rates on crude than on ground iron ore. *Winters Metallic Paint Co. v. C., M. & St. P.*, 427.

Leather, imitation: Rates on, found unreasonable to extent they exceed contemporaneously applicable rate on leather. Reparation awarded. *Chevrolet Motor Co. v. Director General*, 544.

Marble, crushed: Class rates assessed on, found unreasonable to extent they exceeded lower commodity rates contemporaneously applicable on other kinds of stone analogous to crushed marble from a transportation standpoint, and to extent they exceeded lower commodity rate established subsequent to movement. Crushed marble is low in value, loads heavily, is not susceptible to damage, and rarely moves at class rates even for very short hauls. *Musto Sons-Keenan Co. v. S. P. Co.*, 447.

Munition lint: Rates on, found unreasonable to extent they exceeded rates on cottonseed-hull shavings. Transportation characteristics of the two commodities are practically identical, and aside from the manufacture of munitions they are used for substantially similar purposes. Reparation awarded. *Pearson & Co. v. S. L., B. & M.*, 681.

Naphtha: Rates on solvent naphtha, a coal-tar product, l. c. l., found not unreasonable or otherwise unlawful as compared with rates on petroleum naphtha (not coal-tar naphtha). *California Rand Silver v. C. & W.*, 197.

Oil, petroleum: Rate on, in tank cars, found not unreasonable or otherwise unlawful as compared with lower rates on liquid asphalt, ice, lumber, bottles, and sand and gravel. *Huber v. C. R. R. Co. of N. J.*, 539.

COMPETITION.

Commercial: Assigned-car mines which furnish their output for long periods of time to railroads are, at the end of such periods, because of lower costs and better labor conditions, in a position to undersell competing unassigned-car mines. Railroad-owned mines in many instances sell coal commercially and may not only dispose of their product commercially, but they may be leased or sold to outside interests, and thus actively engage in selling commercial coal. Moreover, there is competition in labor between railroad-owned and output-contract mines on the one hand and commercial mines on the other. The commission thinks, therefore, that it has jurisdiction to deal with the distribution of cars to all of such mines under section 3 of the act, competition not being an essential element under section 1. *Penn Tobacco Co.*, 18 I. C. C. 197, 200. Assigned Cars for Bituminous Coal Mines, 701 (717).

COMPONENT. See FACTOR; PROPORTIONAL OR RESHIPING RATES.

93 I. C. C.

COMPROMISE.

Contention that admissions on part of carriers, by their offer to perform spotting service, their subsequent absorption of charge for that service, and payment of reparation, and admission on part of director general, by offer of settlement, establishes fact that line-haul rates included spotting service at points of loading and unloading, or at point of final placement within plants, *Held*: These admissions, although entitled to consideration, are not conclusive. Director general is not chargeable with concessions which may have been made by corporations which succeeded him. His offer was in nature of a compromise, and in accordance with familiar rules of law is not to be held against him. *Pressed Steel Car Co. v. Director General*, 224 (232).

CONCURRENCE.

Overruling Conf. Ruling 341, *Found*: That where a common carrier subject to the act performs an intermediate service in connection with traffic moving at joint rates, it should concur in such joint rates and receive divisions thereof, the divisional arrangements to be so adjusted as to, in effect, result in absorption thereof by line that delivers traffic to carrier performing the intermediate service. *Peoria & Pekin Union Ry.*, 3 (32).

CONFERENCE RULINGS.

Overruling Conf. Ruling 341, *Found*: That where a common carrier subject to the act performs an intermediate service in connection with traffic moving at joint rates, it should concur in such joint rates and receive divisions thereof, the divisional arrangements to be so adjusted as to, in effect, result in absorption thereof by line that delivers the traffic to carrier performing the intermediate service. *Peoria & Pekin Union Ry.*, 3 (22).

Applicable tariff provided that demurrage would not be assessed for detention where carrier's agent demanded payment of transportation charges in excess of tariff authority. Charges billed against car after its arrival at redesignated destination included an admitted overcharge which shipper promptly questioned. *Held*: Billed charges must be regarded as a demand for charges in excess of tariff authority and demurrage was not assessable against the car during period of detention pending controversy over the legal charges. See *Conf. Ruling 32. Milne Lbr. Co. v. C., C. & St. L.*, 661.

CONGESTION.

Congestion existing at piers on Manhattan Island has been referred to by the commission in various cases, and reasonable rules and regulations designed for its relief and to facilitate handling of increasing tonnage of merchandise freight at the piers will not be condemned. *Somerville Iron Works v. C. R. R. Co. of N. J.*, 39 (42).

Export shipments moved during Federal control under permits and on domestic bills of lading to San Francisco. On account of congestion, tariff publishing export rates provided for their application only on freight for which through export bills of lading were issued prior to arrival at port of exit. Complainant was unable to procure export bills at point of origin because defendant's offices had been closed without notice as to means by which, and places where, they could be procured. *Held*: Nonobservance of export tariff provision imposed no additional burden upon director general in handling traffic here involved; nor did this traffic contribute to congestion, which it was the purpose of the rule to relieve. Following *Anderson & Co.*, 61 I. C. C. 64, domestic rates assessed found unreasonable to extent they exceeded lower export rates. Reparation awarded. *Liggett & Myers Tobacco Co. v. Director General*, 61.

CONNECTING LINES.

The commission has jurisdiction over discriminations by carriers against their connections as well as against shippers. See 236 U. S. 351 and 26 I. C. C. 226. Peoria & Pekin Union Ry., 3 (19).

CONSTRUCTION OF STATUTE. See also SECTIONS OF THE ACT.

Under the law as it now stands carriers are under no obligation to make their terminal charges with a view to insuring a profit upon operations of other public terminals. Nor does it seem to the commission to have been contemplated that the expressed policy of Congress of developing public terminals at port cities is to be carried out by imposing unnecessary expense upon shippers and traffic, which would defeat a policy of real terminal improvement. Handling Charges on Cement, Fertilizer, and Salt, 640 (644).

Fundamental purpose of the act is equality of treatment in rates and service, and this principle may not be violated merely because carrier in that way may operate at less expense. If this were not true a carrier in times of car shortage could restrict its car supply to a few large and well-operated mines on its line and ignore the remainder. A carrier's self-interest may not override requirement of equality in car distribution. See 263 U. S. 515, 523; 225 U. S. 326. Id. (721).

The question of a just and nondiscriminatory car distribution rule under provisions of sections 1 and 3 of the act is a different question from that of a rule to be prescribed in case of emergency. The distinction is recognized in section 1 (15) where it is provided that the commission may suspend car service rules at such times. Id. (724).

Contention that section 1 (12) of the act, which was incorporated by the transportation act, 1920, limits the commission's power to change or extend by further limitation the rule of car distribution laid down in the *Traer case*, 13 I. C. C. 431, and *Hocking Valley case*, 12 I. C. C. 398, not sustained. That this was not the intent of Congress is clear. In *United States v. P. R. R. Co.*, 69 L. Ed. 76, the court said that there was nothing in the interstate commerce act as originally enacted, or in the transportation act, or in any earlier amendment, which indicates a purpose on the part of Congress either to allow a carrier to create undue prejudice by use of facilities possessed, or to narrow the commission's powers to prevent unjust discrimination. Id. (730).

CONSTRUCTIVE MILEAGE.

Upon investigation by commission on its own motion, *Found*: That for performing car ferry service in crossing the Mississippi River, addition of 20 constructive miles to distances from west-bank points in determining charges for transportation of articles taking class or commodity rates, computed on basis of interstate distance scales to and from Vicksburg and Natchez, Miss., Angola, North Baton Rouge, Harahan, and New Orleans, La., is unreasonable. Reasonable ferry tolls, based upon arbitraries added to distance rates from and to west-bank points, prescribed for future. Mileage for Mississippi Crossings, 462.

The commission's conclusions in a particular case involving reasonableness of constructive mileages at particular points can not conclude a future decision made upon a record which may show in detail, and more comprehensively, the general practice of carriers as to making additional charges because of expensive bridges, trestles, tunnels, ferry operations, fills, and cuts, or other like devices against obstacles or barriers to transportation. Id. (464).

CONSTRUCTIVE MILEAGE—Continued.

Whether, as a matter of rate making, in the construction of through rates on the distance-scale basis, an allowance of a given number of miles should be made for river transfer service, or arbitraries in cents per 100 pounds be added to the rate computed on basis of strict mileage, is incapable of mathematical demonstration. *Id.* (475).

Considerations both of cost of performing car ferry service at lower Mississippi River crossings, and value thereof to shippers, lead to conclusion that the additional cost should be borne, as nearly as may be, by traffic accommodated, and not imposed upon shippers elsewhere whose traffic is carried under less costly circumstances. *Id.* (475).

Method of employing arbitraries is more reasonable, and less likely to result in undue or unreasonable prejudice or disadvantage to persons, localities, or descriptions of traffic, than method of adding 20 constructive miles to actual distance in computing charges for car ferry service at lower Mississippi River crossings. *Id.* (475).

CONTAINERS AND PACKING. See also RETURNED EMPTIES.

If a commodity is fairly uniform in value, so that carrier knows with reasonable degree of certainty the liability it assumes when it accepts a shipment for transportation, it should establish reasonable tariff regulations relative to packing and loading, with a view to minimizing loss and damage claims, and, having done so, should then publish a single rate based on known transportation characteristics of the commodity. *Released Rates on Stone in Southeast*, 90 (93).

Rates on linseed oil, in tank cars, found unreasonable to extent they exceeded lower rates on same commodity, in packages. Reparation awarded. *Fuller & Co. v. S. P. Co.*, 154.

Official classification ratings on peanut butter; butter, sugar or corn sirup and sugar combined; comb or strained honey; honey and sugar mixtures; olive oil; ground spices; and vinegar, in glass, packed in barrels or boxes; l. c. l., found not unreasonable; but similar ratings in said classification on olives; mince meat; pickles and table sauces, n. o. i. b. n.; fish, other than fresh; preserved fruit; fruit butter; crushed fruit; fruit jam; fruit jelly; fruit pulp; edible jams, jellies, or preserves, n. o. i. b. n.; and corn sirup jelly, in glass, found unreasonable to extent they exceed the first numbered class above the l. c. l. ratings contemporaneously applicable on same articles in metal cans. *Indian Packing Corp. v. Director General*, 400.

Considering superior protection against damage which crating affords, also that furniture frames are unfinished material, *Found*: That l. c. l. rating in official classification on wooden chair and lounge frames, when set up, in boxes or crates, is unreasonable for future to extent it exceeds $2\frac{1}{2}$ times first class. *Parlor Frame Mfrs. Asso. v. A. A. R. R.*, 506.

CONTRACTS AND AGREEMENTS.

In accordance with usual railroad practice, the matter of making and receiving deliveries of cars is the subject of mutual agreement, each line having the right within reasonable limits to designate the point where cars will be received. *Peoria & Pekin Union Ry.*, 3 (16).

CONTRACTS AND AGREEMENTS—Continued.

Contract between consignor and consignee provided that consignee should have benefit of any decrease in freight rates. Consignor, who is not a party to the proceeding, paid all freight charges, no part thereof being paid by consignee, the complainant herein. *Found*: Complainant (consignee) is not entitled to reparation. Whatever may be rights or equities of parties arising out of their contract as to variations in their agreed price for the commodity, dependent upon changes in the transportation rates, they present no question cognizable by this commission, dealing, as it does, with the legal public obligations of the carrier, which is a stranger to the private contract. *See also* 40 I. C. C. 738, 741, and 81 I. C. C. 435, 439. *Crawford County Commrs. v. St. L.-S. F.*, 502 (505).

COURT PROCEEDINGS.

As an outgrowth of receivership proceedings the United States District Court ordered increases in intrastate switching charges of the Evansville & Indianapolis R. R. Tariffs were forwarded to State commission which "neither accepted nor rejected them" on ground that they failed to comply with State statutes as to notice, but such tariffs were retained in the State commission's files "for information only." *Held*: Such increased charges assessed on intrastate shipments during Federal control found not illegal, and it is not within this commission's province to pass upon question of whether the district court erred. *American Hominy Co. v. Director General*, 256.

It is not within commission's province to pass upon question of whether a court erred in its determination. *Id.* (259).

Complaint, filed with commission within 90 days after institution of suit by carrier in the courts for undercharges, found not barred by the statute of limitations. *See* Section 16 (3) of the act. *Texas Co. v. A., T. & S. F.*, 691.

CUMMINS AMENDMENT. *See* RELEASED RATES.

DAMAGES.

Complaint seeking reparation, as overcharges, based upon violations of long-and-short-haul provision of section 4 of the act, dismissed following *Portland Seed Co. case*, 264 U. S. 403. *Pacific Adjustment Co. v. Director General*, 50.

Neither voluntary nor compulsory reduction of a rate by a carrier necessarily entitled shippers under unreduced rates to reparation. *Hawkeye Fuel Co. v. S. & E. Ry. & P. Co.*, 157 (159).

Commission has long adhered to policy that in the public interest reparation should be denied when rates reduced by its orders have been in effect for long periods and when those orders required readjustment of rates throughout an extensive territory and affected shippers at many points. *See also* 40 I. C. C. 517; 77 I. C. C. 683. *Id.* (159-160).

Following *Hale-Halsell Co.* 83 I. C. C. 313, fifth-class rate charged on toilet paper from Green Bay, Wis., to Muskogee, Okla., found unreasonable to extent it exceeded lower rate subsequently established pursuant to *Minnesota & Ontario Paper Co.*, 66 I. C. C. 571. Reparation awarded. *Hale-Halsell Co. v. K., O. & G.*, 205.

DAMAGES—Continued.

Complainant was both consignor and consignee. Shipment was sold f. o. b. destination, purchaser paying freight at destination, as agent for complainant, and deducting it from latter's invoice. *Held*: Complainant is party entitled to recover unreasonable freight charges since he contracted with defendants for carriage and was only party that had privity with them. The only one who can recover is the one that alone was in relation with carrier and from whom carrier took the sum. *Darnell-Taenzer case*, 245 U. S. 531; *Missouri Portland Cement Co.*, 88 I. C. C. 492. *California Cotton & Factorage Co. v. Director General*, 260.

Upon contention that burden of proof to justify rates increased since January 1, 1910, was not met by defendants due to their nonappearance at the hearing, and that complainant is, therefore, entitled to an award of reparation on shipments moving under rates as increased, *Held*: Before commission can find that a shipper is entitled to reparation it must find that the rate is unreasonable, and fact that no evidence was offered on behalf of carriers does not preclude commission from determining whether or not the rate was in fact unreasonable. *Nebraska Bridge Supply & Lbr. Co. v. A., T. & S. F.*, 301 (303).

Shipments were billed in name of consignor who was selling agent of complainant. Complainant's name did not appear on any of the transportation papers, but shipments were made for and on its behalf and freight charges were borne by it. Complainant found party entitled to reparation. *Kaw River Sand & Material Co. v. Director General*, 346 (347-349).

Rates on newsprint paper, wrapping paper and paper napkins, from Little Falls, Minn., and Port Edwards, Nekoosa, Rhinelander, and Green Bay, Wis., to San Antonio, found unreasonable to extent they exceeded rates found reasonable in *Minnesota & Ontario Paper Co.*, 66 I. C. C. 571. Reparation awarded. *San Antonio Paper Co. v. S. A. & A. P. Ry.*, 352.

Contract between consignor and consignee provided that consignee should have benefit of any decrease in freight rates. Consignor, not a party to the proceeding, paid all freight charges, no part thereof being paid by consignee, the complainant herein. *Found*: Complainant (consignee) is not entitled to reparation. Whatever may be rights or equities of parties arising out of their contract as to variations, in their agreed price for the commodity, dependent upon changes in transportation rates, they present no question cognizable by this commission, dealing, as it does, with legal public obligations of carrier, which is a stranger to the private contract. *See also* 40 I. C. C. 738, 741, and 81 I. C. C. 435, 439. *Crawford County Commrs. v. St. L.—S. F.*, 502 (505).

Prior to filing of complaint, assets and liabilities of complainant were assumed by a successor company whose interest was not disclosed until after statute of limitations had run. Upon contention that motion to join successor in interest as co-complainant comes too late, and that lack of interest precludes a recovery of reparation by complainant, *Held*: Following *Plymouth Coal Co.*, 56 I. C. C. 699, if complainant is party injured by a violation of the act award of reparation should be made in its favor, and it may not be denied reparation because of an assignment *pendente lite* under which no adverse rights are asserted. Fact that assignment took place prior to filing of complaint warrants no different conclusion. *See* 68 I. C. C. 138; 83 I. C. C. 557. *Delta Beet Sugar Corp. v. Director General*, 547 (549-550); *Same v. Same*, 551 (553-554).

DAMAGES—Continued.

Following *Jones & Laughlin Steel Co.*, 91 I. C. C. 300, reparation awarded complainants and interveners in respect of interstate shipments on which they paid charges of the Monongahela Connecting, South Buffalo, and Union railroads, in addition to district rates of trunk-line connections, defendants having failed to justify increased rates during nonabsorption period in so far as they resulted in transportation charges exceeding those contemporaneously in effect to and from trunk-line points in same rate districts, aggregate charges applicable during period of nonabsorption having been found unreasonable to that extent in the cited case. *Jones & Laughlin Steel Co. v. P. & L. E.*, 637.

Complainant did not present proof of payment and bearing of freight charges due to its witness not being available. *Found*: That unless further hearing is requested within 10 days after service of report its complaint will be dismissed for want of prosecution. *Id.* (639).

In cases involving a general readjustment of rates substantial justice would not be advanced by awarding reparation to those making such demands. *Parkersburg Rig & Reel Co. v. M. P.*, 667 (669).

DECLARED VALUE. *See RELEASED RATES.*

DEFICIT.

Carrier, which operated at a deficit, contended that under section 15 (6) of the act it is entitled to such just, reasonable, and equitable divisions out of joint rates as will pay proportions of its operating expenses, taxes, rentals, and a fair return on value of property used in service of transportation, properly attributable to services performed. *Held*: Following *Federal Valley R. R. Co.*, 68 I. C. C. 496, fact that carrier has been operating at a deficit does not of itself prove that it is fairly entitled to increased divisions. *Massachusetts Oil Rfg. Co. v. B. & A.*, 110 (114).

DELIVERY. *See also SPOTTING CARS.*

A carrier delivering shipments to industries on its line, for which service its charges are absorbed by initial carrier, may be looked upon as an agent of latter, in that it is completing a service which initial carrier has taken upon itself to perform. *Peoria & Pekin Union*, 3 (16).

Rules, regulations, and practices of C. R. R. Co. of N. J., under which it refuses to float shipments of cast-iron soil pipe from Jersey City to its North River piers, Manhattan Island, N. Y., and requiring shippers to take delivery at former point, found unreasonable. Iron pipe, due chiefly to amount of time required to unload, may be undesirable traffic at pier stations, but defendant does not similarly restrict other substantially similar commodities which are bulky and difficult to handle, and nothing of record indicates that latter should be accorded more favorable rules respecting delivery than cast-iron soil pipe. *Somerville Iron Works v. C. R. R. Co. of N. J.*, 39.

Storage and demurrage charges on lumber held in excess of free time on lighterage equipment at complainant's yard in New York Harbor found not unreasonable or otherwise unlawful. Complainant was unable to furnish berths for boats upon which demurrage accrued, could not receive all shipments consigned to it, did not stop those which were being made, and admittedly was unable to accept delivery. If demurrage was computed on car-demurrage basis it would greatly exceed that actually assessed on lighterage basis, and it is not shown that complainant or its traffic is treated any differently from any other dealer in lumber receiving lighterage-free delivery at private piers in New York Harbor. *Coastwise Lumber & Supply Co. v. P. R. R.*, 283.

DELIVERY—Continued.

Manifestly, the maritime rule that last shipment in is the first shipment out must apply to lighterage delivery in the generality of cases notwithstanding endeavor on part of rail carriers wherever practicable to deliver shipments in sequence of arrival. In a busy terminal yard, through which many commodities are moved daily, the switching and drilling which would be necessary to separate oldest car from all others would demoralize terminal operations. *Id.* (294).

It is the duty of carrier in making "stringpiece" delivery of lumber from lighters or barges to pass lumber over the stringpiece to assigned space on the dock or to consignee. It is not required that lumber be piled symmetrically, that it be tiered, or that ends of pieces be even, but at least various pieces of lumber must be approximately parallel lengthwise. No obligation rests upon carrier to place men upon a dock to receive lumber except to extent necessary to effect delivery thereof in a safe and orderly manner. *Id.* (295).

DEMURRAGE.

Shipment moved to point at which consignee maintained no office. Carrier mailed notice of arrival on postcard which was not delivered, and later wrote letter to consignor requesting disposition orders. Had defendant complied with tariff requirement which provided that notice of unclaimed freight should be by telegram instead of by letter it would have been received by consignor the same day as sent. Defendant's letter, therefore, may not be regarded as a notice prior to date of its receipt. Shipment found overcharged to extent demurrage and penalty charges exceeded those which would have accrued had tariff provision been strictly complied with. Reparation awarded. *Standard Lbr. Co. v. Director General*, 58.

Assessment of demurrage charges on private cars under lease on tracks of lessee found not unreasonable. Tariff rule provided that private cars are exempt from demurrage while on tracks of owner or lessee if owner's or lessee's name is marked on car. Cars here involved were not so marked, and only evidence that cars were under lease to complainant was a letter, which admittedly did not comply with the rule. Complainant had ample notice and actual knowledge of existence of the rule and could have complied therewith by making proper notations on cars. *International Agricultural Corp. v. A. & W. P. R. R.*, 189.

Tariff rule governing demurrage on private cars on private tracks, published following the *Private Car case*, 50 I. C. C. 652, defining a private car and requiring full name of owner or lessee to be painted, stenciled, or boarded thereon in which event car is exempt from demurrage for lessee only, and if name of lessee is not painted, stenciled or boarded on car, it will be exempt from demurrage for owner only, found not unreasonable. Rule was adopted after mature deliberation, has worked out in practice in a generally satisfactory manner, and no better substitute has as yet been brought to commission's attention. *Id.* (189).

Fact that commission's finding in *Private Car case*, 50 I. C. C. 652, with regard to demurrage on private cars while standing on private tracks of owners, was of a broad and unlimited nature affords no basis for contention that in publishing the rule in accordance therewith, carriers might not include such reasonable and proper conditions as would tend to facilitate its practical application and prevent abuses. It was not only their right, but their duty to do so. *Id.* (191).

DEMURRAGE—Continued.

Export shipments originally moved on domestic bills of lading, sailing date and space on steamer having been previously reserved. Domestic bills were exchanged for export bills, the latter bearing notation "order notify" consignees at foreign ports. Due to refusal of shipments by vessel on which space reserved they were stored and subsequently exported on other vessels. *Held*: Following *U. S. Steel Products Co.*, 88 I. C. C. 57, demurrage and storage charges assessed, but not paid, found illegal. Applicable tariff provided in such cases for giving of advance notice to notify party at port of exit that carrier is ready to make delivery, but there were no parties at the port to be notified and no demurrage or storage could therefore accrue. *American Steel Export Co. v. Director General*, 235.

Storage and demurrage charges on lumber held in excess of free time on lighterage equipment at complainant's yard in New York Harbor found not unreasonable or otherwise unlawful. Complainant was unable to furnish berths for boats upon which demurrage accrued, could not receive all shipments consigned to it, did not stop those which were being made, and admittedly was unable to accept delivery. If demurrage was computed on car-demurrage basis it would greatly exceed that actually assessed on lighterage basis, and it is not shown that complainant or its traffic is treated any differently from any other dealer in lumber receiving lighterage-free delivery at private piers in New York Harbor. *Coastwise Lumber & Supply Co. v. P. R. R.*, 288.

Demurrage charges are not assessed primarily for revenue purposes and are not based upon a fair rental value of equipment, but are rather in nature of penalties to prevent wasteful and extravagant use of equipment. *Id.* (289).

Applicable tariff provided that demurrage would not be assessed for detention where carrier's agent demanded payment of transportation charges in excess of tariff authority. Charges billed against car after its arrival at reconsigned destination included an admitted overcharge which shipper promptly questioned. *Held*: Billed charges must be regarded as a demand for charges in excess of tariff authority and demurrage was not assessable against the car during period of detention pending controversy over legal charges. See *Birmingham Commission Co.*, 74 I. C. C. 693, and *Conf. Ruling 32*. *Milne Lbr. Co. v. C., C. & St. L.*, 661.

DENSITY OF TRAFFIC. See VOLUME OF TRAFFIC.

DEPRESSED RATES. See LOW AND DEPRESSED RATES.

DESIRABLE AND UNDESIRABLE TRAFFIC.

Acid carboys are not desirable freight and can not be handled as expeditiously or cheaply as other empty returned containers which can be tiered. There is considerable danger involved in their handling, and many restrictions not operative with respect to other empty returned containers increase cost of their transportation. *Carboys, Returned Empty, in Western Territory*, 672 (673).

DETENTION. See DEMURRAGE.

DIFFERENTIALS. See also SPREAD OF RATES.

Reasonable rates on crude oil should be relatively lower than on refined oil. *Barnett Oil & Gas Co. v. Director General*, 85 (87).

DIFFERENTIALS—Continued.

Rates on zinc ore from points in Oklahoma on Miami Mineral Belt and Northeast Oklahoma railroads, and from trunk-line and junction producing points in Missouri, Kansas, and Oklahoma, to South Fort Smith, Ark., found not unreasonable but unduly prejudicial in favor of competitors operating zinc-smelting plants at Collinsville, East St. Louis, La Salle, Peoria, and Chicago, Ill., and Grassell, Ind., to extent that factors of above-named carriers exceeded by more than 0.5 cent. the contemporaneous factors on like traffic to the preferred plants. Nonprejudicial basis of rates prescribed. *Athletic Mining & Smelting Co. v. K. C. S.*, 119.

Interstate rate on drugs and medicines from Norwich, N. Y., to New York City, found not unreasonable or discriminatory, but found unduly prejudicial to complainant in favor of competitors at Cleveland, Detroit, Kalamazoo, Holland, Indianapolis, and St. Louis, to extent it exceeds differentials under rates from such competing points herein prescribed. *Norwich Pharmacal Co. v. B. & O.*, 246.

Rates on lumber from Group 12 points on Guyandotte branch of the C. & O. in West Virginia to destinations in c. f. a. territory and in Canada found not unreasonable or unduly prejudicial as compared with lower rates to same destinations from points in Groups 11 and 13 on the Coal River branch. While through distances from respective groups are substantially the same, differentials over junction point rates to Group 12 are higher than those to Groups 11 and 13, but it can not be found that rates assailed are unreasonable because of present variations. *Peytona Lbr. Co. v. C. & O.*, 363.

DIRECTOR GENERAL. See **FEDERAL CONTROL.**

DISCRIMINATION. See also **PREFERENCES AND PREJUDICES.**

The commission has jurisdiction over discriminations by carriers against their connections as well as against shippers. See 236 U. S. 351 and 26 I. C. C. 226. *Peoria & Pekin Union*, 3 (19).

Minimum weights on alfalfa hay from points in New Mexico to points in Texas, higher than from competing points in Texas to same destinations found unreasonable and unduly prejudicial to shippers in New Mexico, unduly preferential of shippers in Texas, and unjustly discriminatory against interstate commerce. Maximum minimum weights from New Mexico to Texas suggested. *New Mexico Corp. Commission v. A., T. & S. F.*, 43.

Commission has same authority and duty with respect to removal of unjust discrimination brought about by different c. l. minima as it has in case of unjust discrimination against interstate traffic caused by State rates. *Kansas City Millers' Club*, 50 I. C. C. 170, 182. *Id.* (47).

Rates on ground iron ore found not unjustly discriminatory as compared with lower rates on crude iron ore. They are not like kinds of traffic within meaning of section 2 of the act, since circumstances and conditions surrounding their transportation are substantially dissimilar. *Winters Metallic Paint Co. v. C., M. & St. P.*, 427.

DISTANCE.

Comparisons based upon distance alone have little probative value in measuring reasonableness of rates. This is particularly true where rates compared are group rates in establishment of which the element of distance must be subordinated to other considerations. *Louisville Cooperage Co. v. L. & N.*, 593 (594).

DISTANCE RATES.

Proposal to restrict basis for computing distance for application of mileage rates on brick and articles taking same rates between points in Oklahoma and Texas and between points in Arkansas and Oklahoma, to distances over routes embracing as a maximum, lines, or parts of lines of not more than three carriers, without exception, found not justified. Increases in rates will result to certain destinations in Texas to which short line distances from Oklahoma are now figured over four or more lines; Texas intrastate rates are figured by use of routes embracing more than three lines; and schedules on other commodities are not similarly limited. Brick between Oklahoma and Texas Points, 210.

Rates on iron and steel articles from Niles, Ohio, to Mexia, Tex., found not unreasonable because in excess of rates prescribed in *Memphis-Southwestern Investigation*, 55 I. C. C. 515; 77 I. C. C. 473, for like distances. Rates prescribed in case cited did not include Texas territory and question of propriety of its extension thereto is pending in another case upon a far more comprehensive record. *Standard Boiler & Plate Iron Co. v. P. R. R.*, 285.

Rates on horses and mules between Fort Worth and points in Arkansas, Kansas, Oklahoma, western Louisiana, southern Missouri, portions of Colorado and New Mexico, and in Texas other than differential territory, found unreasonable and unduly prejudicial to Fort Worth and unduly preferential of Wichita, Kansas City, St. Joseph, St. Louis, and Oklahoma City. Reasonable and nonprejudicial distance rates prescribed. Horse and Mule Rates in the Southwest, 1924, 479.

Rates on broken stone or chatts from Joplin, Webb City, and Oronogo, Mo., to destinations in Crawford County, Kans., over the Missouri Pacific, found unreasonable to extent they exceeded rates prescribed in *Memphis-Southwestern Investigation*, 77 I. C. C. 473, for similar distances involving single-line hauls. Reasonable rates prescribed for the future. *Crawford County Commrs. v. St. L.-S. F.* 502.

DISTRIBUTION OF CARS. *See* CAR DISTRIBUTION.

DISTRICT RATES. *See* GROUPS AND BLANKETS.

DISTURBANCE OF ADJUSTMENT. *See* ADJUSTMENTS AND RELATIONSHIPS; RESTORED RATES.

DIVERSION. *See* RECONSIGNMENT AND DIVERSION.

DIVISIONS.

While divisions, in first instance, are properly the concern of carriers, commission has certain jurisdiction with regard to them, exercise of which requires the consideration of many factors. *Peoria & Pekin Union*, 3 (19).

Overruling Conf. Ruling 341, *Found*: That where a common carrier subject to the act performs an intermediate service in connection with traffic moving at joint rates, it should concur in such joint rates and receive divisions thereof, divisional arrangements to be so adjusted as to, in effect, result in absorption thereof by line that delivers traffic to carrier performing the intermediate service. *Id.* (22).

Upon further hearing, just, reasonable, and equitable divisions to be received by Fore River R. R. Corp., out of joint rates on petroleum and products established pursuant to finding in original report, 66 I. C. C. 535, prescribed, and adjustment thereof required upon basis herein found just, reasonable, and equitable. *Massachusetts Oil Rfg. Co. v. B. & A.*, 110.

93 I. C. C.

DIVISIONS—Continued.

Carrier, which operated at a deficit, contended that under section 15 (6) of the act it is entitled to such just, reasonable, and equitable divisions out of joint rates as will pay proportions of its operating expenses, taxes, rentals, and a fair return on value of property used in service of transportation, properly attributable to services performed. *Held*: Following *Federal Valley R. R. Co.*, 68 I. C. C. 496, fact that carrier has been operating at a deficit does not of itself prove that it is fairly entitled to increased divisions. *Id.* (114).

Disputes between carriers over divisions afford no justification for increased rates. Peaches from Alabama, Georgia, and Tennessee, 534 (538).

Divisions and allowances accorded Christie & Eastern Ry., a common-carrier tap line, by trunk-line connections, out of joint rates on lumber and forest products, found not unjust, unreasonable, inequitable, or otherwise unlawful. The Christie originally connected with but a single trunk line at Sandel but by extending its service under trackage rights additional outlets were established at Lecompte and Long Leaf, *Held*: Hauling traffic through Long Leaf or Lecompte, instead of to less distant connection at Sandel, is an unnecessary and uneconomic service and not in the public interest. Service, as extended, falls under the ban of inefficiency since it entails a burden of expense voluntarily assumed which can not be overcome by increased volume of traffic. Moreover, such unnecessary expense should not be offset by depleting revenues of trunk-line connections. *Christie & Eastern Ry. v. K. C. S.*, 675.

Divisions between carriers not operated under similar circumstances and conditions are not a proper measure of divisions to tap lines. *Id.* (677).

In determining and prescribing divisions the commission is enjoined to give due consideration, among other matters, to efficiency with which carriers concerned are operated and importance to public of the transportation services of such carriers. *Id.* (679).

DOMESTIC RATES. See EXPORT AND DOMESTIC; IMPORT AND DOMESTIC.
DOUBLE INCREASE.

Shipments moved under combination rates, each factor of which was increased under General Order No. 28 of director general. Tariff of one participating carrier contained the combination rule which provided a method for constructing through rates made on combination, which rule was not published in tariff of other participating carrier until after shipments moved. *Held*: Where one tariff used in making combination rates on through shipments contains a rule that such rates will be subject to a single increase, there is a holding out to shipper of rate so constructed which publishing carrier must protect. *Sligo Iron Store Co.*, 62 I. C. C. 643, 73 I. C. C. 551. Shipments found overcharged and reparation awarded. *Southwestern Shipbuilding Co. v. Director General*, 337.

On shipments moving during Federal control charges were collected on basis of a combination rate both factors of which had been increased under General Order No. 28 of the director general. Tariff carrying one factor contained a provision that where charges on through continuous movements were based on combinations of separately established rates increases authorized by the general order should be applied to combination in effect on June 24, 1918. *Held*: Following *Sligo Iron Store Co.*, 62 I. C. C. 643; 73 I. C. C. 551, a through combination plus a single increase was applicable on the shipments and they were accordingly overcharged. *Delta Beet Sugar Corp. v. Director General*, 547.

DRESSING-IN-TRANSIT. *See* TRANSIT ARRANGEMENTS.
DROUGHT.

Rate on wheat from points in Nebraska to Great Falls, Mont., during Federal control, found not unreasonable as compared with lower rate subsequently established by director general to relieve drought conditions. Complainant enjoyed full use of lower rate until it expired by limitation and record is not convincing that commission would have ordered its establishment, as reasonable, if formal complaint had been filed. Moreover, fact that lower rate was not established until after some of complainant's shipments had moved does not change the situation. *Royal Milling Co. v. Director General*, 377.

DUTY OF COMMISSION. *See* JURISDICTION.

EARNINGS. *See also* DEFICIT.

Considering rates in connection with recognized principle that ton-mile earnings decrease as distance increases, rates on green coffee from New Orleans to Montgomery found not unreasonable as compared with rates from same point of origin to Nashville, Louisville, St. Louis, and other farther distant points. *Fletcher-Wilson Coffee Co. v. L. & N.*, 555.

EFFICIENCY AND ECONOMY.

Upon investigation by commission on its own motion, *Found*: That cost of repairs to locomotives and cars of the Erie R. R. at outside shops during 1920-1923 was greatly in excess of cost of similar work in its own shops, and that a large part of such excess cost was an unreasonable expenditure for maintenance of equipment, and not in the interest of efficient and economical management as required by section 15a of the act. *Construction and Repair of Ry. Equipment*, 646.

Divisions and allowances accorded Christie & Eastern Ry., a common-carrier tap line, by trunk-line connections, out of joint rates on lumber and forest products, found not unjust, unreasonable, inequitable, or otherwise unlawful. The Christie originally connected with but a single trunk line at Sandel but by extending its service under trackage rights additional outlets were established at Lecompte and Long Leaf. *Held*: Hauling traffic through Long Leaf or Lecompte, instead of to less distant connection at Sandel, is an unnecessary and uneconomic service and not in the public interest. Service, as extended, falls under the ban of inefficiency since it entails a burden of expense voluntarily assumed which can not be overcome by increased volume of traffic. Moreover, such unnecessary expense should not be offset by depleting revenues of trunk-line connections. *Christie & Eastern Ry. v. K. C. S.*, 675.

In determining and prescribing divisions the commission is enjoined to give due consideration, among other matters, to efficiency with which carriers concerned are operated and importance to public of the transportation services of such carriers. *Id.* (679).

EMERGENCY RATES.

Rate on wheat from points in Nebraska to Great Falls, Mont., during Federal control, found not unreasonable as compared with lower rate subsequently established by director general to relieve drought conditions. Complainant enjoyed full use of the lower rate until it expired by limitation and record is not convincing that commission would have ordered its establishment, as reasonable, if formal complaint had been filed. Moreover, fact that lower rate was not established until after some of complainant's shipments had moved does not change the situation. *Royal Milling Co. v. Director General*, 377.

EQUALIZING RATES. *See* PARITY OF RATES.

EQUIPMENT.

Upon investigation by commission on its own motion, *Found*: That cost of repairs to locomotives and cars of the Erie R. R. at outside shops during 1920-1923 was greatly in excess of cost of similar work in its own shops, and that a large part of such excess cost was an unreasonable expenditure for maintenance of equipment, and not in the interest of efficient and economical management as required by section 15a of the act. Construction and Repair of Ry. Equipment, 646.

Upon contention that the commission is without jurisdiction over the distribution of special types of equipment used exclusively in hauling company fuel because such equipment has never been impressed with character of common-carrier instrumentalities, such equipment is not used in commerce at all, but only in performing private work of a railroad company, *Held*: Such special types were in commercial service before being put in fuel-coal service, are placed at partial-output mines selling commercial coal, are counted and distributed on a pro rata basis, and may be unloaded like ordinary coal cars. They constitute part of the available equipment of these carriers for commercial shipments, and fall within class of equipment as to which Congress requires "a just and equal distribution and prevention of an unjust and discriminatory one." *Illinois Central case*, 215 U. S. 452, 474. Assigned Cars for Bituminous Coal Mines, 701 (725).

ERRORS AND MISTAKES.

Rates on coal from Mount Olive and Staunton, Ill., to West Pullman, Ill., during Federal control, increased in error by director general and subsequently restored to former level, found not unreasonable as compared with rates from other mines not subjected to the increase. Rates from Illinois mines are admittedly low and did not become unreasonable merely because other low rates to same destination were not correspondingly increased; nor was increase applied through error sufficient in itself to show that resulting rate was unreasonable. *Consolidated Coal Co. v. Director General*, 53.

Class rate on l. c. l. shipment of iron pipe fittings from Barberton, Ohio, to Duluth, Minn., destined to Virginia, Minn., found inapplicable to extent it exceeded lower commodity rate published in same tariff on "iron and steel articles, c. l.," which lower rate by tariff note applied on a list of commodities in which pipe fittings were included without limitation as to whether c. l. or l. c. l. While carriers intended to omit all reference to l. c. l. rates in connection with lower commodity rate, through oversight this was not done. However, erroneous publication of rates does not justify a departure therefrom and intention of framers is not controlling. Reparation awarded. *Murray-Egan-McLeod Co. v. P. R. R.*, 79.

Proposed cancellation of joint commodity rates on cement plaster from Pyramid and Sweetwater, Tex., to certain destinations on the St. L.-S. W. Ry., leaving in effect higher combinations, found not justified. The joint rates were published contrary to instructions and sole justification offered is carrier's desire to correct this error. However, no rate change is proposed from competing points at which cement-plaster plants are located, and such a rate disadvantage would exclude protestant from markets at local Cotton Belt points. While protestant would be able to reach competitive points at equal rates, it would not enjoy as liberal routing privileges as its competitors. Moreover, protestant is as favorably situated with respect to distance as are its competitors, and no reason appears why it should not have same basis of rates. Cement Plaster from Pyramid and Sweetwater, 315.

ESTIMATED WEIGHT. *See* WEIGHTS AND WEIGHING.

EVIDENCE. *See* BURDEN OF PROOF; PROOF AND EVIDENCE.

EXCEPTIONS.

Exceptions to the governing classifications, as well as commodity rates, are usually established only when there is a considerable volume of movement in particular channels. *Indian Packing Corp. v. Director General*, 400 (404).

EXPEDITED SERVICE.

Prayer for an order requiring construction and operation of an interchange track between intersecting lines of A., T. & S. F. and C., R. I. & P. rail-ways at Courtland, Kans., in order to reduce the mileage and therefore the rate, from Superior to Rock Island points, but more particularly to expedite delivery, complainant alleging loss of business to rival plants which can make more expeditious delivery than it can, denied. No definite evidence was introduced as to probable difference in time over route sought and over present route; nor with respect to time consumed in shipments from competing points. Moreover, record fails to establish that there would be sufficient traffic over the connection to justify its construction and maintenance. *Nebraska Cement Co. v. A., T. & S. F.*, 163.

EXPORT AND DOMESTIC.

Export shipments moved during Federal control under permits and on domestic bills of lading to San Francisco. On account of congestion, tariff publishing export rates provided for their application only on freight for which through export bills of lading were issued prior to arrival at port of exit. Complainant was unable to procure export bills at point of origin because defendant's offices had been closed without notice as to means by which, and places where, they could be procured. *Held*: Nonobservance of export tariff provision imposed no additional burden upon director general in handling traffic here involved; nor did this traffic contribute to congestion, which it was the purpose of the rule to relieve. Following *Anderson & Co.*, 61 I. C. C. 64, domestic rates assessed found unreasonable to extent they exceeded lower export rates. Reparation awarded. *Liggett & Myers Tobacco Co. v. Director General*, 61.

EXPORT TRAFFIC.

Following *Clay Grain Co.*, 78 I. C. C. 539, aggregate of line-haul rates and charges for switching from connections with road-haul carriers to export elevators at Galveston, on export grain from points in Missouri, Iowa, Minnesota, Nebraska, Kansas, Colorado, and Oklahoma found unreasonable to extent they exceeded such line-haul rates exclusive of switching charges. Reparation awarded. *Armour Grain Co. v. A., T. & S. F.*, 124. Aggregate of line-haul rates and trackage charge for use of tracks during period cars remain in hold yards awaiting delivery to elevators at Texas City, Tex., on export grain from points in Missouri, Iowa, Minnesota, Nebraska, Kansas, Colorado, and Oklahoma found unreasonable to extent they exceeded such line-haul rates exclusive of trackage charge. Reparation awarded. *Id.* (124).

EXPORT TRAFFIC—Continued.

Export shipments originally moved on domestic bills of lading, sailing date and space on steamer having been previously reserved. Domestic bills were exchanged for export bills, the latter bearing notation "order notify" consignees at foreign ports. Due to refusal of shipments by vessel on which space reserved they were stored and subsequently exported on other vessels. *Held*: Following *U. S. Steel Products Co.*, 88 I. C. C. 57, demurrage and storage charges assessed, but not paid, found illegal. Applicable tariff provided in such cases for the giving of advance notice to notify party at port of exit that carrier is ready to make delivery, but there were no parties at the port to be notified and no demurrage or storage could therefore accrue. *American Steel Export Co. v. Director General*, 235.

Upon reconsideration, former report, 88 I. C. C. 152, wherein it was found that rates on self-propelling freight vehicles from Wichita Falls and Oklahoma City to Galveston and New Orleans, for export, were not unreasonable, but that they were unduly prejudicial in favor of shippers at Chicago and St. Louis, affirmed. *Wichita Motors Co. v. A. & V.*, 635.

EXPRESS TRANSPORTATION.

Express rate on cantaloupes from Turlock, Calif., to New York and Boston found unreasonable and unduly prejudicial to extent it exceeded rates contemporaneously applicable from Brawley, Calif., and other Imperial Valley points. A blanket rate on fruits and vegetables applies from all California producing points to certain eastern cities and no justification appears for higher rates from Turlock on cantaloupes, when Brawley and Turlock take same rates on other commodities, especially in view of slight differences in distance for long hauls here considered. Moreover, trans-continental rail carriers provide same rates from both points on cantaloupes, melons, and other commodities to New York and Boston. Reasonable rates prescribed and reparation awarded. *Gentile Co. v. Am. Ry. Exp. Co.*, 76.

First-class express rating and rates on trees, n. o. s., and shrubs and branches thereof, found not unreasonable or unduly prejudicial as compared with second-class rating and rates on berry or vegetable plants, boxed or crated, or with materially lower l. c. l. freight rates on trees, shrubs, and vines under certain conditions of packing. No competition exists between trees and shrubs on the one hand and vegetable or berry plants on the other, no movement is shown under freight rates, nor is service rendered by express comparable with that by freight. *Asso. of Nurserymen v. Am. Ry. Exp.*, 166.

Specific commodity express rates and refrigeration charges on strawberries from points in Louisiana to destinations in Oklahoma, Kansas, and Missouri, found not unreasonable as compared with lower rates and charges to selected destinations in different sections of the country, including large consuming centers such as Chicago, St. Louis, Kansas City, Cleveland, and Philadelphia, or with rates and refrigeration charges from Alabama and Texas points to destinations here considered. Volume of movement to large markets is greatly in excess of that to points here considered, and record discloses no movement of strawberries from Alabama and Texas points. Moreover, single rates selected from large groups or average of a few rates taken from groups embracing many points do not afford a fair comparison in measuring reasonableness of rates attacked. *Dawson Produce Co. v. Am. Ry. Exp.*, 390.

EXPRESS TRANSPORTATION—Continued.

There should be a higher return to railroads for the carriage of express matter than they receive upon freight traffic, and while the two services are not directly comparable, it is proper to contrast charges exacted for lesser freight service with charges for transportation of the same articles in superior express service. *Parlor Frame Mfrs. Asso. v. A. A. R. R.*, 506 (508).

Having regard for difference in the structure of freight and express classifications the commission can not predicate a condemnation of the freight rate for a light and bulky article like furniture frames solely upon a showing that express rates are lower between many points. *Id.* (509).

Second-class express rates on cream, in 10-gallon cans, from Albion and Dallas Center, Iowa, to Omaha, found unreasonable to extent they exceeded commodity distance rates subsequently established. Reparation awarded. *Fairmont Creamery Co. v. Am. Ry. Exp. Co.*, 684.

FACTOR. *See also* PROPORTIONAL OR RESHIPING RATES.

Rates on zinc ore from points in Oklahoma on Miami Mineral Belt and Northeast Oklahoma railroads, and from trunk-line and junction producing points in Missouri, Kansas, and Oklahoma, to South Fort Smith, Ark., found not unreasonable but unduly prejudicial in favor of competitors operating zinc-smelting plants at Collinsville, East St. Louis, La Salle, Peoria, and Chicago, Ill., and Grasselli, Ind., to extent that factors of above-named carriers exceeded by more than 0.5 cent the contemporaneous factors on like traffic to the preferred plants. Nonprejudicial basis of rates prescribed. *Athletic Mining & Smelting Co. v. K. C. S.*, 119.

Rate on wrapping paper from International Falls, Minn., to Chicago found unreasonable to extent that factor up to Duluth exceeded rate prescribed in *Minnesota & Ontario Paper Co.*, 66 I. C. C. 571, from Fox River group to Chicago. Reparation awarded. *Seaman Paper Co. v. Director General*, 139.

Third-class rates applicable on soapstone disks, loose, from Schuyler and Tye River, Va., to Toledo, Ohio, and Muncie, Ind., found unreasonable to extent components beyond Esmont, Va., exceeded fifth class. Maximum reasonable rates prescribed for future and reparation awarded. *Toledo Cooker Co. v. N. & A. Ry.*, 271.

FEDERAL CONTROL.

On shipments moving during Federal control objection to complaint was raised by director general because one participating carrier was not named as a party defendant; also that since another carrier named was not under Federal control the commission's jurisdiction does not extend to that portion of the transportation over the latter's line. *Held*: Rate attacked is a joint rate and, even if Federal control had not intervened, it would not have been necessary to name all carriers participating in the transportation as parties defendant. Moreover, under joint rates liability of of defendants is joint and several. *Consolidated Coal Co. v. Director General*, 53-54.

FILING AND POSTING.

Where special permission is granted carriers to establish rates upon less than statutory notice, such permission has no effect upon rates until they have been published and filed in accordance with requirements of the act. *Oklahoma Portland Cement Co. v. A., T. & S. F.*, 203 (204).

FILING AND POSTING—Continued.

As an outgrowth of receivership proceedings the United States District Court ordered increases in intrastate switching charges of the Evansville & Indianapolis R. R. Tariffs were forwarded to State commission which "neither accepted nor rejected them" on ground that they failed to comply with State statutes as to notice, but such tariffs were retained in the State commission's files "for information only." *Held*: Such increased charges assessed on intrastate shipments during Federal control found not illegal, and it is not within this commission's province to pass upon question of whether the district court erred. *American Hominy Co. v. Director General*, 256.

No track scales were located at either loading or unloading point, and no tariff provision was made for ascertaining weights of gravel shipped in unweighed cars. Charges assessed on shipments not weighed or measured, based upon an unfiled circular issued by carrier to station agents and conductors, which provided for use of certain estimated weights on this commodity when shipped under above conditions, found legally applicable. Practice of carriers in issuing circulars respecting use of estimated weights on unweighed shipments was considered by commission in *Weighing of Freight by Carriers*, 28 I. C. C. 7, and not condemned. Moreover, unless these rules are incorporated in tariffs they are not usually filed with regulatory bodies. *Becker County v. Director General*, 368.

FINDINGS AND ORDERS OF COMMISSION.

The commission's conclusions in a particular case involving reasonableness of constructive mileages at particular points can not conclude a future decision made upon a record which may show in detail, and more comprehensively, the general practice of carriers as to making additional charges because of expensive bridges, trestles, tunnels, ferry operations, fills, and cuts, or other like devices against obstacles or barriers to transportation. Mileage for Mississippi Crossings, 462 (464).

It does not follow from fact that the commission has approved increases in handling charges at certain ports that a lower basis of charges would have been unlawful. Carriers may, subject to certain restrictions, initiate rates lower than commission may prescribe. The question is as to whether or not they are proposing to go to such lengths in attempting to meet competition and attract business that resulting charges will be so low as to create a burden upon other traffic. *Handling Charges on Cement, Fertilizer, and Salt*, 640 (644).

Fact that large sums may have been invested in reliance upon a rule of car distribution laid down by the commission which is unreasonable and unjustly discriminatory or may become or be found so under the act does not mean that the commission is powerless to change the rule and prescribe a just and nonpreferential one. *Douglass case*, 21 I. C. C. 97, 101; *So. Pac. Co. v. I. C. C.*, 219 U. S. 433; *Mottley case*, 219 U. S. 467. *Assigned Cars for Bituminous Coal Mines*, 701 (737).

FIXING RATES. *See* RATE MAKING.

FREE TIME. *See* DEMURRAGE.

FURTHER HEARING.

Complainant did not present proof of payment and bearing of freight charges due to its witness not being available. *Found*: That unless further hearing is requested within 10 days after service of report its complaint will be dismissed for want of prosecution. *Jones & Laughlin Steel Co. v. P. & L. E. R. R.*, 637 (639).

GROUPS AND BLANKETS.

Nonabsorption of switching charges of Pittsburgh, Allegheny & McKees Rocks R. R., on traffic to and from points of unloading and loading at complainant's plants at McKees Rocks and Allegheny, Pa., during Federal control, found not to have resulted in unreasonable charges because in excess of Pittsburgh district rates. While a number of large industries in that district performed their own spotting service, and some received allowances from trunk lines and others did not, record does not show that industries generally therein, without regard to size or complexity of plant tracks, received benefit of flat Pittsburgh rates on all commodities regardless of origin or destination. *Pressed Steel Car Co. v. Director General*, 224.

Rate on tanbark from Ross Spur (Wild Cat Spur), Wis., to Sheboygan, Wis., during Federal control, found not unreasonable as compared with lower rates contemporaneously applicable from Star Lake group points in same general vicinity. Shipments were sporadic, request for a through rate was not made until movement had ceased, and traffic moved during period when operating conditions on the branch were rendered difficult by heavy snowfall. Moreover, rate assailed compares favorably with those found reasonable on similar traffic in 58 I. C. C. 217 and 87 I. C. C. 322. *American Hide & Leather Co. v. Director General*, 265.

Rate assessed on petroleum fuel oil from Loftus, Calif., to Bisbee, Ariz., found inapplicable. Applicable rate which exceeded aggregate of intermediates found in contravention of section 4 of the act, and unreasonable to extent it exceeded lower group rate applicable from farther distant points in southern California, which lower rate carriers subsequently extended to Loftus. Reparation awarded. *Gilmore Co. v. P. E. Ry.*, 357.

Rates on lumber from Group 12 points on the Guyandotte branch of the C. & O. in West Virginia to destinations in c. f. a. territory and in Canada found not unreasonable or unduly prejudicial as compared with lower rates to same destinations from points in Groups 11 and 13 on the Coal River branch. While through distances from the respective groups are substantially the same, differentials over junction point rates to Group 12 are higher than those to Groups 11 and 13, but it can not be found that rates assailed are unreasonable because of present variations. *Peytona Lbr. Co. v. C. & O.*, 363.

Single rates selected from large groups or averages predicated upon rates to a few points selected from extensive groups do not afford a fair comparison in measuring reasonableness of rates. *Dawson Produce Co. v. Am. Ry. Exp.*, 390 (392).

Proposed increased rates on iron and steel articles, between Newark, N. J., and points grouped therewith, and New England points, found not justified. Carriers rely entirely upon fact that proposed rates will restore spread between Newark and Philadelphia groups established following decision in *Pardee Works*, 39 I. C. C. 162. For over seven years that spread has been treated as one varying with rates and not as a fixed differential. Moreover, there is no evidence that rates from Newark group are subnormal as compared with rates from other groups, and former relationship, if desired by carriers, could be readily restored by reducing rates from Philadelphia group instead of increasing those from Newark group. *Iron and Steel between New Jersey and New England Points*, 499.

GROUPS AND BLANKETS—Continued.

Rate on rough oak and gum staves and headings from Bonita, La., a local station on the Missouri Pacific, to Louisville found not unreasonable or otherwise unlawful as compared with lower group rate applicable on lumber, staves, and heading, from various points to Louisville for comparable distances, and later established from Bonita via route of movement, or with rate contemporaneously applicable on yellow-pine and cypress lumber from Missouri Pacific junction points. *Louisville Co-op-erage Co. v. L. & N.*, 593.

Comparisons based upon distance alone have little probative value in measuring reasonableness of rates. This is particularly true where rates compared are group rates in establishment of which element of distance must be subordinated to other considerations. *Id.* (594).

Rates assessed on oranges from points in California to Virginia, Minn., found inapplicable and applicable rates, based upon combinations of the blanket rate to Duluth and third-class beyond, found unreasonable to extent they exceeded the transcontinental Group F rates contemporaneously in effect to Duluth. Reparation awarded. *Hansen-Peterson Co. v. A., T. & S. F.*, 596.

An expressed desire of shippers and carriers for continuance of a group adjustment does not relieve commission of duty of considering whether its continuance would result in unjust and unreasonable rates or in undue prejudice. *C., H. & D. Ry. Co. v. I. C. C.*, 206 U. S. 142. Lime from Eastern Trunk Line Points, 617 (632).

Following *Jones & Laughlin Steel Co.*, 91 I. C. C. 300, reparation awarded complainants and interveners in respect of interstate shipments on which they paid charges of the Monongahela Connecting, South Buffalo, and Union railroads, in addition to district rates of trunk-line connections, defendants having failed to justify increased rates during nonabsorption period in so far as they resulted in transportation charges exceeding those contemporaneously in effect to and from trunk-line points in same rate districts, aggregate charges applicable during period of nonabsorption having been found unreasonable to that extent in the cited case. *Jones & Laughlin Steel Co. v. P. & L. E.*, 637.

HANDLING CHARGES. *See* WHARFAGE.

IMPORT AND DOMESTIC.

Domestic rate on imported shelled peanuts from San Francisco to Wilmington, N. C., found not unreasonable as compared with lower import rate subsequently established. Complainant relies exclusively on cases in which reparation was awarded on import shipments to basis of subsequently established rates, but earnings on shipments here involved are substantially lower than on those in cases referred to. Moreover, the subsequent reduction does not in itself warrant a finding that former rate was unreasonable. *Universal Oil Co. v. Director General*, 237.

Domestic class rate, which included absorption of part of tollage charges at New Orleans on imported flint pebbles shipped to Dewey, Okla., assessed as a result of cancellation of import commodity rate on account of no movement, under general policy of director general with respect to unused rates, found unreasonable as compared with import rate to Kansas City, a farther distant point, which rate included absorption of all tollage charges and was subsequently established to Dewey. Reparation awarded. *Dewey Portland Cement Co. v. A., T. & S. F.*, 311.

IMPORT RATES AND TRAFFIC.

Proposed increased rates on South American and Australian imported wool in the grease, in machine-compressed bales, from Boston, Lowell, New London, and New York, to La Porte and Mishawaka, Ind., found justified. Wool in the grease, in bales of the same density as South American and Australian wool, move under higher rates from Boston and New York to all points of consumption in official territory. Present rate to La Porte, although fixed by commission, is low and gives undue preference to South American and Australian wool as against wool imported from other foreign countries, and as against domestic wool, and unduly prefers La Porte as against other consuming points in official territory. Imported Wool from Boston and New York, 26.

INCREASED RATES. See ADVANCE IN RATES; DOUBLE INCREASE.

INDIRECT ROUTES. See CIRCUITOUS ROUTES.

INDUSTRIAL LINES.

Holding that a particular industrial railroad is a common carrier means simply that it serves the public as well as the proprietary industry. It does not change the character of service performed for the proprietary industry. Pressed Steel Car Co. v. Director General, 224 (232).

INTENTION.

Erroneous publication of rates does not justify a departure therefrom and intention of framers is not controlling. Murray-Egan-McLeod Co. v. P. R. R., 79 (80).

Tariffs are construed according to their language, and intention of framers is not controlling. *Boldt Co.*, 42 I. C. C. 308, 310; *Southern Veneer Asso.*, 62 I. C. C. 669, 674. *United Cycle & Supply Co. v. B. & O.*, 689 (690).

INTERCHANGE OF TRAFFIC.

In the interchange of traffic between carriers it is the ordinarily accepted practice for receiving line to designate tracks within a reasonable distance of intersection of its rails with those of a connecting carrier where cars will be received from delivering line, and latter carrier places cars on tracks so designated. *Peoria & Pekin Union*, 3 (9).

In accordance with usual railroad practice, matter of making and receiving deliveries of cars is the subject of mutual agreement, each line having the right within reasonable limits to designate point where cars will be received. *Id.* (16).

Practice of Peoria & Pekin Union Ry., in assessing charges at and in the vicinity of Peoria, Ill., for interchange service between connections with its tenants and rails of the Minneapolis & St. Louis, and St. Louis, Springfield & Peoria, an electric line, while contemporaneously performing a like service between connections with its tenants and rails of C., B. & Q., and Rock Island without charge, found unjustly discriminatory and unduly prejudicial. *Id.* (23).

Prayer for an order requiring construction and operation of an interchange track between intersecting lines of A., T. & S. F. and C., R. I. & P. railways at Courtland, Kans., in order to reduce the mileage and therefore the rate, from Superior to Rock Island points, but more particularly to expedite delivery, complainant alleging loss of business to rival plants which can make more expeditious delivery, denied. No definite evidence was introduced as to probable difference in time over route sought and over present route; nor with respect to time consumed in shipments from competing points. Moreover, record fails to establish that there would be sufficient traffic over the connection to justify its construction and maintenance. *Nebraska Cement Co. v. A., T. & S. F.*, 163.

INTERCORPORATE RELATIONSHIPS.

Ownership alone in one corporation by another does not create an identity of corporate interest between the two companies, or render stock-holding company the owner of property of the other, or create the relationship of principal and agent or representative between the two. See *Southern Pacific Terminal case*, 219 U. S. 498. *Peoria & Pekin Union*, 3 (13).

INTERMEDIATE CARRIER.

Overruling Conf. Ruling 341, *Found*: That where a common carrier subject to the act performs an intermediate service in connection with traffic moving at joint rates, it should concur in such joint rates and receive divisions thereof, divisional arrangements to be so adjusted as to, in effect, result in absorption thereof by line that delivers traffic to carrier performing the intermediate service. *Peoria & Pekin Union*, 3 (22).

INTRASTATE RATES. See STATE AND INTERSTATE; STATE RATES.

INVESTIGATION.

Upon investigation by commission on its own motion, *Found*: That for performing car ferry service in crossing the Mississippi River, addition of 20 constructive miles to distances from west-bank points in determining charges for the transportation of articles taking class or commodity rates, computed on basis of interstate distance scales to and from Vicksburg and Natchez, Miss., Angola, North Baton Rouge, Harahan, and New Orleans, La., is unreasonable. Reasonable ferry tolls, based upon arbitraries added to distance rates from and to west-bank points, prescribed for future. Mileage for Mississippi Crossings, 462.

Upon consideration of matters involved in investigation instituted by commission on its own motion into reasonableness of wharfage, handling, storage, and other accessorial services at south Atlantic and Gulf ports, *Found*: In view of numerous instances of overlapping of competitive conditions affecting traffic handled through north and south Atlantic ports raising questions that can not be satisfactorily disposed of by limiting the proceeding to south Atlantic and Gulf ports, such proceeding reopened and its scope broadened to include all Atlantic and Gulf ports. Wharfage Charges at South Atlantic and Gulf Ports, 609.

Upon investigation by commission on its own motion, *Found*: That cost of repairs to locomotives and cars of the Erie R. R. at outside shops during 1920-1923, was greatly in excess of cost of similar work in its own shops, and that a large part of such excess cost was an unreasonable expenditure for maintenance of equipment, and not in the interest of efficient and economical management as required by section 15a of the act. Construction and Repair of Ry. Equipment, 646.

INVESTMENTS.

Fact that large sums may have been invested in reliance upon a rule of car distribution which is unreasonable and unjustly discriminatory or may become or be found so under the act does not mean that the commission is powerless to change the rule and prescribe a just and nonpreferential one. *Douglas case*, 21 I. C. C. 97, 101; *So. Pac. Co. v. I. C. C.*, 219 U. S. 433; *Mottley case*, 219 U. S. 467. Assigned Cars for Bituminous Coal Mines, 701 (737).

ISOLATED SHIPMENT. See SPORADIC MOVEMENT.

ISSUE.

Upon consideration of matters involved in investigation instituted by commission on its own motion into reasonableness of wharfage, handling, storage, and other accessorial services at south Atlantic and Gulf ports, *Found*: In view of numerous instances of overlapping of competitive conditions affecting traffic handled through north and south Atlantic ports raising questions that can not be satisfactorily disposed of by limiting the proceeding to south Atlantic and Gulf ports, such proceeding reopened and its scope broadened to include all Atlantic and Gulf ports. Wharfage Charges at South Atlantic and Gulf Ports, 609.

JOINT AND SEVERAL LIABILITY. *See* LIABILITY.

JOINT RATES. *See* THROUGH ROUTES AND JOINT RATES.

JUNCTION-POINT RATES. *See* BRANCH AND SHORT LINE POINTS.

JURISDICTION.

While divisions, in first instance, are properly the concern of carriers, the commission has certain jurisdiction with regard to them, exercise of which requires the consideration of many factors. *Peoria & Pekin Union*, 3 (19).

The commission has jurisdiction over discriminations by carriers against their connections as well as against shippers. *See* 236 U. S. 351 and 26 I. C. C. 226. *Id.* (19).

Commission has same authority and duty with respect to removal of unjust discrimination brought about by different c. l. minima as it has in case of unjust discrimination against interstate traffic caused by State rates. *Kansas City Millers' Club*, 50 I. C. C. 170, 182. *New Mexico Corp. Comm. v. A., T. & S. F.*, 43 (47).

On shipments moving during Federal control objection to complaint was raised by director general because one participating carrier was not named as a party defendant; also that since another carrier named was not under Federal control, the commission's jurisdiction does not extend to that portion of the transportation over the latter's line. *Held*: Rate attacked is a joint rate and, even if Federal control had not intervened, it would not have been necessary to name all carriers participating in the transportation as parties defendant. Moreover, under joint rates liability of defendants is joint and several. *Consolidated Coal Co. v. Director General*, 53-54.

The commission is without power to order refund of war taxes. *McClintick & Co. v. P. M.*, 69 (70).

Complaint sought establishment of transit arrangements on line of a certain carrier. Contention of such carrier that commission can not make any order in such cases affecting traffic moving from origins or to destinations on other lines, found without merit, since transit arrangements are treated as matters local to line on which transit point is situated. *C. R. R. Co. v. U. S.*, 257 U. S. 247. *Lange & Crist Box & Lbr. Co. v. B. & O.*, 207 (208).

It is not within commission's province to pass upon question of whether a court erred in its determination. *American Hominy Co. v. Director General*, 256 (259).

The commission has power under section 6 (13-b) of the act to establish through routes between rail and water carriers and prescribe maximum rail-and-water and rail-water-and-rail rates over rail and water lines even though water line is not used under a common control, management, or arrangement for continuous carriage or shipment. *Houston Cotton Exchange v. A. & A. R. R. Corp.*, 268.

JURISDICTION—Continued.

Counsel for defendants questioned right of opposing counsel to represent many shippers named as complainants, and also contended that many claims presented are barred by the statute of limitations. But as they admit that at least some shippers named are bona fide complainants and that some claims are not barred by the statute the commission may proceed to consider issues without passing upon jurisdictional question as to individual complainants and claims. *Dickerson v. Director General*, 304 (305). It is not the commission's function to equalize milling costs. *Stuttgart Rice Mill Co. v. A. & V.*, 517 (528).

On account of risk to passenger traffic, the New York Rapid Transit Corp. refused longer to permit petroleum oil, in tank cars, to be transported through its subway in Brooklyn, N. Y. Complainant was notified by the South Brooklyn Ry. Co. that it would not transport such commodity to complainant's plant after June 1, 1924. Upon complaint requesting that commission require carrier to continue such transportation after June 1, *Held*: Upon the record, made in March, 1924, the commission has before it no violation of the act in that regard. *Huber v. C. R. R. Co. of N. J.*, 539 (540).

An expressed desire of shippers and carriers for the continuance of a group adjustment does not relieve commission of duty of considering whether its continuance would result in unjust and unreasonable rates or in undue prejudice. *C., H. & D. Ry. Co. v. I. C. C.*, 206 U. S. 142. Lime from Eastern Trunk Line Points, 617 (632).

While Congress has expressed a policy looking to development of public terminals at port cities, it has not delegated authority to the commission to enforce that policy. Scope of the commission's activities is limited by terms of the interstate commerce act, and unless proposed terminal charges are found to be in contravention of some provision of that act it is beyond the commission's power to condemn them. Handling Charges on Cement, Fertilizer, and Salt, 640 (643-644).

The commission's authority over the distribution of cars of carriers subject to the act is to be found in sections 1, 3, and 15. Section 1 requires rules of car distribution to be reasonable, section 3 prohibits them from being unduly preferential or prejudicial, and sections 1 and 15 authorize the commission to prescribe just and reasonable rules. Provisions of these sections clearly indicate the broad scope of authority which Congress has conferred upon the commission, and important duties with which the commission is charged, to require, in time of car shortage, a just and equal distribution of cars and prevention of a distribution which is unjust and discriminatory. *U. S. v. New River Co.*, 265 U. S. 533. Assigned Cars for Bituminous Coal Mines, 701 (714).

Upon contention that under section 1 (12) of the act the commission has no jurisdiction over distribution of cars to carrier-owned or output-contract mines which furnish railway fuel exclusively for at least six months, because such mines are not "served" by a carrier, *Held*: Word "served" has no judicially determined or technical meaning which would make it inapplicable to such mines. The commission believes that Congress intended to use the word in its ordinary and well-accepted meaning; i. e., to mean the furnishing of cars by a carrier at its own mines or at those the output of which it takes. As used in paragraph (12) "served" is a convenient term to show that provisions of this paragraph apply not only to mines located on a carrier's own line, regardless of ownership or contractual arrangements, but also to those mines located off its line and which it customarily supplies with cars. *Id.* (714-715).

JURISDICTION—Continued.

Assigned-car mines which furnish their output for long periods of time to railroads are, at end of such periods, because of lower costs and better labor conditions, in a position to undersell competing unassigned-car mines. Railroad-owned mines in many instances sell coal commercially and may not only dispose of their product commercially, but they may be leased or sold to outside interests, and thus actively engage in selling commercial coal. Moreover, there is competition in labor between railroad-owned and output-contract mines on the one hand and commercial mines on the other. The commission thinks, therefore, that it has jurisdiction to deal with the distribution of cars to all of such mines under section 3 of the act, competition not being an essential element under section 1. *Penn Tobacco Co.*, 18 I. C. C. 197, 200. Id. (717).

Upon contention that commission is without jurisdiction over distribution of special types of equipment used exclusively in hauling company fuel because such equipment has never been impressed with character of common-carrier instrumentalities, such equipment is not used in commerce at all, but only in performing private work of a railroad company, *Held*: Such special types were in commercial service before being put in fuel-coal service, are placed at partial out-put mines selling commercial coal, are counted and distributed on a pro rata basis, and may be unloaded like ordinary coal cars. They constitute part of the available equipment of these carriers for commercial shipments, and fall within class of equipment as to which Congress requires "a just and equal distribution and prevention of an unjust and discriminatory one." *Illinois Central case*, 215 U. S. 452, 474. Id. (725).

The act not only confers authority upon the commission to restrict the preferential use of private cars as was done in *Hocking Valley case*, 12 I. C. C. 398, and *Traer case*, 13 I. C. C. 431, but authorizes the commission to prohibit altogether such preferential use. *U. S. v. New River Co.*, 265 U. S. 533, and cases there cited. Id. (729-730).

Private cars which are paid for by carriers for use and are used on their lines are clearly "facilities possessed," and come within broad powers conferred upon the commission by the statute to prevent unjust discrimination. Id. (730).

Contention that section 1 (12) of the act, which was incorporated by the transportation act, 1920, limits the commission's power to change or extend by further limitation the rule of car distribution laid down in the *Traer case*, 13 I. C. C. 431, and *Hocking Valley case*, 12 I. C. C. 398, not sustained. That this was not the intent of Congress is clear. In *United States v. P. R. R. Co.*, 69 L. Ed. 76, the court said that there was nothing in the interstate commerce act as originally enacted, or in the transportation act, or in any earlier amendment, which indicates a purpose on the part of Congress either to allow a carrier to create undue prejudice by use of facilities possessed, or to narrow the commission's powers to prevent unjust discrimination. Id. (730).

Fact that large sums may have been invested in reliance upon a rule of car distribution which is unreasonable and unjustly discriminatory or may become or be found so under the act does not mean that the commission is powerless to change the rule and prescribe a just and nonpreferential one. *Douglas case*, 21 I. C. C. 97, 101; *So. Pac. Co. v. I. C. C.*, 219 U. S. 433; *Mottley case*, 219 U. S. 467. Id. (737).

LEGAL RATES. *See also* OVERCHARGES.

Shipments of used Army knapsacks, in cases, were billed as old rags, in cases and charges were collected at rate applicable on old rags. When shipments moved knapsacks or haversacks, in boxes, any quantity, were rated first class. *Found*: Commission having repeatedly declined to sanction principle that old and secondhand articles are necessarily entitled to lower ratings than same articles when new, first-class rates were legally applicable and shipments were undercharged. *Levene's Sons v. D., L. & W.*, 103.

Following *Lancaster case*, 73 I. C. C. 567, class rates on "Iron or steel bars," assessed on steel rods, in coils, found inapplicable to extent they exceeded commodity rates on "Iron or steel rods, in coils." Class rates did not specifically provide for shipments in coils, whereas commodity item contained such provision, and shipments here involved otherwise complied with requirements of the commodity description. Reparation awarded. *New England Drawn Steel Co. v. Director General*, 171.

Tariff provided commodity rate on granite blocks, slabs, or pieces, when "rough quarried, * * *" subject to declaration by shipper that actual value was not in excess of a certain amount, and for application of class rate when of greater value. Actual value exceeded limited value specified under commodity rate and class rate was assessed. Limitations as to value in connection with the commodity rate were unlawful and void since they were published without commission's authorization as provided in section 20 (11) of the act. Shipment here involved consisted of rough granite and fell within description of material on which commodity rate applied. Reparation awarded. *Carpenter v. C. V. Ry.*, 309.

At time of movement there was no specific rate or rating on "earthenware jugs, insulated and metal jacketed," and under analogous article rule rate applicable on "jugs, glass, insulated and metal jacketed," was assessed. Contemporaneously lower rates applied on "pottery, earthenware, stoneware, common brown or gray jugware." *Found*: An earthenware jug when insulated and metal jacketed, completely loses its identity as an ordinary earthenware jug or jar and value of insulated metal-jacketed articles greatly exceeds that of ordinary earthenware jugs. Article under consideration does not fall within generic term "pottery earthenware, stoneware, common brown or gray jugware," and rate charged was applicable. *Cullum & Boren Co. v. C., B. & Q.*, 354.

No track scales were located at either loading or unloading point, and no tariff provision was made for ascertaining weights of gravel shipped in unweighed cars. Charges assessed on shipments not weighed or measured, based upon an unfiled circular issued by carrier to station agents and conductors, which provided for use of certain estimated weights on this commodity when shipped under above conditions, found legally applicable. Practice of carriers in issuing circulars respecting use of estimated weights on unweighed shipments was considered by commission in *Weighing of Freight by Carriers*, 28 I. C. C. 7, and not condemned. Moreover, unless these rules are incorporated in tariffs they are not usually filed with regulatory bodies. *Becker County v. Director General*, 368.

Where classification provides a specific rating on an article, a broad description used in connection with a lower commodity rate under which such article may be included does not take it out of the classification. *Cleveland Akron Bag Co. v. W. & L. E.*, 694 (695).

LEGAL RATES—Continued.

Bicycles were classified under the heading of "hand vehicles" upon which first-class rates applied. Contemporaneously a lower commodity rate was maintained on "light and heavy non-self-propelling freight and passenger vehicles." *Held*: Since a bicycle is neither a freight nor a passenger vehicle, first-class rates assessed were applicable. *United Cycle & Supply Co. v. B. & O.*, 689; *Jones v. P. R. R.*, 697.

LESS THAN CARLOADS. *See also ANY-QUANTITY RATES.*

First-class rate on cotton shirt forms, l. c. l., from Baltimore to Washington, N. C., found not unreasonable as compared with lower commodity rate formerly in effect, or with rate on finished shirts in opposite direction. Commodity rate was canceled because other manufacturers of shirt forms in North Carolina requested establishment of similar rates lower than first class and defendants urged that it would be unduly prejudicial to charge first-class rates from other points while maintaining lower commodity rates from Washington. The finished shirt rate in the opposite direction was also subsequently canceled because considered subnormal, and first-class rates now apply in both directions. Moreover, defendants instanced first-class rates for similar and greater distances which are higher than rates charged. *Flowers & Stell v. N. S. R. R.*, 388.

LEVEL OF RATES.

Quite generally the rate levels in the Southwest are somewhat higher than in the Southeast. *Horse and Mule Rates in the Southwest, 1924*, 479 (489).

LIABILITY. *See also RELEASED RATES.*

On shipments moving during Federal control objection to complaint was raised by director general because one participating carrier was not named as a party defendant; also that since another carrier named was not under Federal control, the commission's jurisdiction does not extend to that portion of the transportation over the latter's line. *Held*: Rate attacked is a joint rate and, even if Federal control had not intervened, it would not have been necessary to name all carriers participating in the transportation as parties defendant. Moreover, under joint rates liability of defendants is joint and several. *Consolidated Coal Co. v. Director General*, 53-54.

LIGHT AND BULKY ARTICLES.

Having regard for difference in structure of freight and express classifications the commission can not predicate a condemnation of the freight rate for a light and bulky article like furniture frames solely upon a showing that express rates are lower between many points. *Parlor Frame Mfrs. Asso. v. A. A. R. R.*, 506 (509).

LIGHTERAGE DELIVERY. *See DELIVERY.***LIKE KINDS OF TRAFFIC.** *See also ANALOGOUS ARTICLES; COMPARATIVE RATES.*

Crude iron ore and ground iron ore are not like kinds of traffic within meaning of section 2 of the act, since circumstances and conditions surrounding their transportation are dissimilar. *Winters Metallic Paint Co. v. C., M. & St. P.*, 427 (431).

Chemical and building lime found not sufficiently dissimilar from a transportation standpoint to warrant maintenance of different rates thereon. *Lime from Eastern Trunk Line Points*, 617 (631).

LIMITATION OF ACTION.

Counsel for defendants questioned right of opposing counsel to represent many shippers named as complainants, and also contended that many claims presented are barred by the statute of limitations. But as they admit that at least some shippers named are bona fide complainants and that some claims are not barred the commission may proceed to consider the issues without passing upon the jurisdictional question as to individual complainants and claims. *Dickerson v. Director General*, 304 (305).

Formal complaint filed by same company filing informal proceeding bore signatures of complainant's attorney and of the general traffic manager of another company which bought complainant's entire stock. Upon contention that formal complaint is barred because filed by successor company, and does not represent a formal complaint filed by same company named in the informal proceeding, *Held*: While formal complaint carries signature of general traffic manager of the successor company without showing agency, it is also signed by complainant's attorney, and as presented is properly signed and not barred. *Forrester-Nace Box Co. v. Director General*, 665.

Complainant was informed by commission that its informal claim for reparation on shipments moving during Federal control was not susceptible of informal adjustment and that recourse lay through formal complaint. After extensive correspondence between complainant and the railroad administration culminating in a refusal of the director general to pay the claim it was resubmitted to the commission formally. *Held*: Formal complaint is barred because not filed within one year after termination of Federal control as prescribed in section 206 (c) of the transportation act, 1920. *Sexauer & Son v. Director General*, 687.

Complaint, filed with commission within 90 days after institution of suit by carrier in the courts for undercharges, found not barred by the statute of limitations. *See* Section 16 (3) of the act. *Texas Co. v. A., T. & S. F.*, 691.

LIMITATION OF LIABILITY. *See* RELEASED RATES.

LOCAL RATES. *See* COMBINATION RATES.

LOCATION. *See* ADVANTAGES AND DISADVANTAGES.

LONG AND SHORT HAUL.

In General:

Complaint seeking reparation, as overcharges, based upon violations of long-and-short-haul provision of section 4 of the act, dismissed following *Portland Seed Co. case*, 264 U. S. 403. *Pacific Adjustment Co. v. Director General*, 50.

Defendants' refusal to establish joint rates on grain and products from the West and South via Bangor, Pa., over certain through routes found not unreasonable where fourth section violations would be created thereby. *Flory Milling Co. v. C. N. E. Ry.*, 129.

A lower rate over a route other than route of movement does not constitute a violation of the long-and-short-haul provision of section 4 of the act. *Wagner Motor Co. v. M. C. R. R.*, 195 (196).

Fact that a rate violates the long-and-short-haul provision of section 4 of the act, in and of itself, does not establish unreasonableness. *Id.* (196).

Existence of a departure from the long-and-short-haul clause of section 4 of the act is not in itself proof that rate from the intermediate point is unreasonable. *Gentile Bros. Co. v. C. of G. Ry.*, 328 (329).

LONG AND SHORT HAUL—Continued.

In General—Continued.

Publication subject to rule 77 of Tariff Circular 18-A of lower rates from farther distant than from intermediate points is tantamount to an admission that higher rate from the intermediate points is unreasonable. *Levene's Sons v. D., L. & W.*, 344.

Proposed increased rates on cotton piece goods and on junk and scrap iron from Texas, Louisiana, and Oklahoma points to St. Louis and other points in defined territories, and on oyster shells from Memphis to Missouri and Kansas points, published for sole purpose of removing fourth-section departures in compliance with commission's fourth-section order No. 8600 issued in connection with decision in *Memphis-Southwestern Investigation*, 77 I. C. C. 473, found not justified. *Commodity Rates from Southwestern Points*, 394.

Reasonableness of an increased rate can not be established by simply showing that departures from the fourth section are thereby removed, *Iron and Steel Articles from Philadelphia*, 92 I. C. C. 123, or in order not to disturb commercial conditions. *Coal from Stations in W. Va.*, 423 (426).

Fourth-section relief granted by authorizing carriers to establish and maintain by all routes between Fort Worth, Wichita, Kansas City, St. Joseph, St. Louis, and Oklahoma City, on the one hand, and various interstate destinations on the other, the lowest rates on horses and mules prescribed as maximum rates over any route between said points, and to maintain higher rates from, to, or between intermediate points, provided, that rates from, to, or between the intermediate points shall not exceed rates prescribed as maximum and in no case exceed the lowest combination. *Horse and Mule Rates in the Southwest*, 1924, 479.

It does not follow that because the rate to an intermediate point is higher than to a more distant point, the higher rate is therefore unreasonable under section 1 of the act. *Forrester-Nace Box Co. v. Director General*, 665 (666).

Binghamton, N. Y.: Rate on scrap brass from, to Philadelphia, found unreasonable to extent it exceeded lower rate from Black Rock, Buffalo, and East Buffalo, N. Y., farther distant points. Publication subject to rule 77 of Tariff Circular 18-A of lower rate from farther distant points was in violation of the long-and-short-haul clause of the fourth section and was tantamount to an admission by defendant that higher rate from Binghamton was unreasonable. *Standard Asphalt & Refining Co.*, 66 I. C. C. 611, and cases there cited. *Reparation awarded. Levene's Sons v. D., L. & W.*, 344.

Carl Junction, Mo.: Rate on empty wooden boxes from Kansas City to Carl Junction, during Federal control, found not unreasonable because in excess of the rate to Carthage, Mo., to which Carl Junction is intermediate. Complainant submitted no evidence bearing upon unreasonableness of the rate assailed but takes position that because rate to intermediate point is higher than to more distant point, the higher rate is therefore unreasonable under section 1 of the act, but this does not follow. Defendants show that rate assailed compares favorably with rates on similar and other empty containers for similar hauls from Kansas City. *Forrester-Nace Box Co. v. Director General*, 665.

LONG AND SHORT HAUL—Continued.

Chesapeake & Ohio Ry. points: Proposed increased rates on coal from farther distant points on the Gauley branch of the C. & O. to level of the New River or intermediate basis of rates, in order to comply with commission's order in 89 I. C. C. 638, denying fourth-section relief, found not justified. No similar increases are proposed from competing mines on the same branch north of Belva, and if advances are allowed it will be necessary for protestants to absorb them in order to continue shipping to western markets. Moreover, respondent made no effort to show that proposed rates are reasonable *per se*, and its revenue would not be materially affected were departures removed by reducing rates from the intermediate points. Coal from Stations in W. Va., 423.

Fort Valley, Ga.: Rate on peaches from, to Watuppa, Mass., found not unreasonable, discriminatory, or unduly prejudicial as compared with rate in effect at time of movement from Eufaula, Ala., a farther distant point to which Fort Valley is directly intermediate over route of movement, or with lower rate established after shipment moved. Existence of fourth-section departure, protected by an appropriate application, is not in itself proof that rate from Fort Valley was unreasonable. The subsequent reduction was part of a voluntary general reduction in rates from Georgia to New England points, made at request of shippers in order to enable them to meet adverse marketing conditions. Under the circumstances it can not be regarded as implying any admission on part of carriers that prior rate was unreasonable. *Gentile Bros. Co. v. C. of G. Ry.*, 328.

Jackson and Meridian, Miss.: Combination rates on rice bran from Wheatley, Ark., to, higher than joint rate to New Orleans, a more distant point on same route in same direction, found in violation of long-and-short-haul provision of section 4 of the act. *Jackson Traffic Bureau v. A. & V.*, 322.

Mason City, Iowa: Rates on tractors from Detroit, to, found not unreasonable, discriminatory, unduly prejudicial, or in violation of long-and-short-haul provision of section 4 of the act, as compared with lower rates from Detroit to Minneapolis and St. Paul, more distant points. Lower rate did not apply over route of movement through Mason City and therefore no fourth-section violation existed. Furthermore, lower rates are on basis entirely different from that applying to Mason City; they were established as a result of decisions in 28 I. C. C. 47, 29 I. C. C. 530, and 46 I. C. C. 39; and were found not unreasonable or unduly prejudicial in *North Iowa Traffic Asso.*, 58 I. C. C. 491. *Wagner Motor Co. v. M. C. R. R.*, 195.

LOSS AND DAMAGE.

Fact that claims for loss and damage are frequent in the transportation of a given commodity is not in itself a valid reason for establishment of released rates. Released Rates on Stone in Southeast, 90 (93).

If a commodity is fairly uniform in value, so that carrier knows with reasonable degree of certainty the liability it assumes when it accepts a shipment for transportation, it should establish reasonable tariff regulations relative to packing and loading, with a view to minimizing loss and damage claims, and, having done so, should then publish a single rate based on known transportation characteristics of the commodity. *Id.* (93).

LOSS AND DAMAGE—Continued.

Where susceptibility of a commodity to loss or damage is comparatively high and wide range in value makes amount of any claim that may arise difficult to estimate, carriers are at a disadvantage unless permitted to base liability and charges on a declaration of value obtained in advance from shipper. In such cases a basic rate should be established conditioned upon declaration by shipper of fair average value of commoner forms of the commodity, together with one or more higher rates to apply when greater value is declared, such higher rates to be no more than reasonably commensurate with additional risk assumed. *Id.* (93).

Where rates based on declared or agreed value have been authorized by commission, the statute accords shippers the right to understate value for purpose of securing the lower rate, and if excess of unreleased over released rates is more than cost of insurance, shippers will ordinarily release carrier and obtain transit insurance elsewhere. But frequently transit insurance can not be obtained, in which event, those shippers who are financially able to do so will assume risk of loss themselves. On other hand, small shippers are less apt to be able to risk loss of their less frequent shipments, and will thus in greater measure feel compelled to resort to higher unreleased rates for adequate protection. *Id.* (94).

In establishing reasonable rates value of commodity to be rated and its liability to damage incident to transportation must be considered. *Jackson Traffic Bureau v. B. & O.*, 342 (343).

LOW AND DEPRESSED RATES.

Rates on coal from Mount Olive and Staunton, Ill., to West Pullman, Ill., during Federal control, increased in error by director general and subsequently restored to former level, found not unreasonable as compared with rates from other mines not subjected to the increase. Rates from Illinois mines are admittedly low and did not become unreasonable merely because other low rates to same destination were not correspondingly increased; nor was increase applied through error sufficient in itself to show that resulting rate was unreasonable. *Consolidated Coal Co. v. Director General*, 53.

First-class rate on cotton shirt forms, l. c. l., from Baltimore to Washington, N. C., found not unreasonable as compared with lower commodity rate formerly in effect, or with rate on finished shirts in opposite direction. Commodity rate was canceled because other manufacturers of shirt forms in North Carolina requested establishment of similar rates lower than first class and defendants urged that it would be unduly prejudicial to charge first-class rates from other points while maintaining lower commodity rates from Washington. The finished shirt rate in the opposite direction was also subsequently canceled because considered subnormal, and first-class rates now apply in both directions. Moreover, defendants instanced first-class rates for similar and greater distances which are higher than rates charged. *Flowers & Stell v. N. S. R. R.*, 388.

It does not follow from fact that the commission has approved increases in handling charges at certain ports that a lower basis of charges would have been unlawful. Carriers may, subject to certain restrictions, initiate rates lower than the commission may prescribe. The question is as to whether or not they are proposing to go to such lengths in attempting to meet competition and attract business that resulting charges will be so low as to create a burden upon other traffic. *Handling Charges on Cement, Fertilizer, and Salt*, 640 (644).

MAKE-UP AND BREAK-UP SERVICE.

Ordinarily service of making up and breaking up trains is an operating incident compensation for which is included in the transportation rate. Where, however, such service is rendered in some instances and not in others, and in still others is the only service performed by a common carrier, the charge for that service should be separately stated. *Peoria & Pekin Union*, 3 (22).

MANUFACTURED ARTICLES.

Although commission has condemned rates on raw materials higher than on products manufactured therefrom, that fact, in and of itself, does not demonstrate that higher rates on the raw materials are unreasonable. *Crown Willamette Paper Company*, 78 I. C. C. 273. *Minnesota & Ontario Paper Co. v. Director General*, 105 (108).

In establishment of freight classifications, involving as it does the grouping of all commodities into a limited number of classes, principle that unfinished should be rated lower than finished article must frequently yield to other considerations. *Parlor Frame Mfrs. Asso. v. A. A. R. R.*, 506 (510).

MARITIME RULE.

Manifestly, the maritime rule that last shipment in is first shipment out must apply to lighterage delivered in the generality of cases notwithstanding endeavor on part of rail carriers wherever practicable to deliver shipments in sequence of arrival. In a busy terminal yard, through which many commodities are moved daily, switching and drilling which would be necessary to separate oldest car from all others would demoralize terminal operations. *Coastwise Lumber & Supply Co. v. P. R. R.*, 288 (294).

MARKETS.

The public interest is not conserved by shutting out, by denial of joint rates, a miller from markets which he can reach by routes not necessitating performance of a greater total service for him than service over present routes over which joint rates apply unless some substantial right of carriers is thereby invaded. On other hand, the commission would clearly not be justified in attempting to neutralize disadvantage of geographical location by requiring wasteful service or additional service without adequate compensation, although shipper may be in dire need. *Flory Milling Co. v. C. N. E. Ry.*, 129 (134).

MAXIMUM RATES.

Rates prescribed in *Mississippi Valley case*, 64 I. C. C. 306, were not prescribed as standards of reasonable maximum rates, but primarily to bring about an adjustment in harmony with requirements of section 4 of the act and at same time conserve revenues of carriers. *Paper Boxes between Southeastern Points*, 559 (563).

MEASURE OF RATES.

A rate admittedly low does not become unreasonable if increased merely because other low rates to same destination are not increased at same time; nor is an increase applied through error sufficient in itself to show that the resulting rate is unreasonable. *Consolidated Coal Co. v. Director General*, 53 (54).

While fact that shipment was isolated is to be considered, it is not controlling in determining the reasonableness of a rate; such issue must be decided upon its merits. *Armacost & Co.*, 88 I. C. C. 187; *Meigs Pulpwood Co.*, 78 I. C. C. 473. *Chattanooga Bottle & Glass Mfg. Co. v. S. Ry.*, 71 (72).

Reasonable rates on crude oil should be relatively lower than on refined oil. *Barnett Oil & Gas Co. v. Director General*, 85 (87).

MEASURE OF RATES—Continued.

Although commission has condemned rates on raw materials higher than on products manufactured therefrom, that fact, in and of itself, does not demonstrate that higher rates on raw materials are unreasonable. *Crown Willamette Paper Co.*, 78 I. C. C. 273. *Minnesota & Ontario Paper Co. v. Director General*, 105 (108).

Subsequent reduction of a rate is insufficient to establish unreasonableness of preexisting rate. *General Chemical Co. v. Director General*, 193 (194).

Fact that a rate violates the long-and-short-haul provision of section 4 of the act, in and of itself, does not establish its unreasonableness. *Wagner Motor Co. v. M. C.*, 195 (196).

Mere fact that shipper at some other point may have obtained a reduction in his rate prior to date complainant obtained a like reduction does not prove that rate paid by complainant was unreasonable. *Wofford Oil Co.*, 66 I. C. C. 509. *Miami Copper Co. v. A. E. R. R.*, 221 (222).

Fact that a rate was subsequently reduced does not of itself support a finding that higher rate formerly in effect was unreasonable. *Universal Oil Co. v. Director General*, 237 (240).

The commission can not accept percentage formula as a measure of the reasonableness of rates or as a criterion of their lawfulness in other respects, the matters to be considered being rather earnings and transportation conditions. *General Chemical Co.*, 83 I. C. C. 582. *Toledo Cooker Co. v. N. & A. Ry.*, 271 (273-274).

Existence of a departure from long-and-short-haul clause of section 4 of the act is not in itself proof that rate from the intermediate point is unreasonable. *Gentile Bros. Co. v. C. of G. Ry.*, 328 (329).

In establishing reasonable rates value of commodity to be rated and its liability to damage incident to transportation must be considered. *Jackson Traffic Bureau v. B. & O.*, 342 (343).

Subsequent reduction of a rate does not establish unreasonableness of rate previously in effect. *Kaw River Sand & Material Co. v. Director General*, 346 (347).

A joint rate which exceeds the aggregate of intermediate rates is *prima facie* unreasonable. *Id.* (347).

Reasonableness of rates charged, and not strict conformity with prescribed method of making percentage increases or reductions in their predecessors, is the controlling consideration. *Anaconda Copper Mining Co.*, 57 I. C. C. 723, and other cited cases. *N. Y. Stable Manure Co. v. Director General*, 349 (351).

Fact that rate somewhat lower than rate charged was prescribed by commission for future does not necessarily show that former rate was unreasonable. Especially is this so where the new rate is part of an extensive readjustment. *News Corp. v. M. P.*, 381 (383).

One test of the reasonableness of a rate is its relation to whole rate structure of which it is a part. *Id.* (383).

Single rates selected from large groups or averages predicated upon rates to a few points selected from extensive groups do not afford a fair comparison in measuring reasonableness of rates. *Dawson Produce Co. v. Am. Ry. Exp.*, 390 (392).

Reasonableness of an increased rate can not be established by simply showing that departures from the fourth section are thereby removed, *Iron and Steel Articles from Philadelphia*, 92 I. C. C. 123, or in order not to disturb commercial conditions. *Coal from Stations in W. Va.*, 423 (426).

MEASURE OF RATES—Continued.

There should be a higher return to railroads for carriage of express matter than they receive upon freight traffic, and while the two services are not directly comparable, it is proper to contrast charges exacted for lesser freight service with charges for transportation of same articles in superior express service. *Parlor Frame Mfrs. Asso. v. A. A. R. R.*, 506 (508).

Having regard for difference in structure of freight and express classifications, the commission can not predicate a condemnation of the freight rate for a light and bulky article like furniture frames solely upon a showing that express rates are lower between many points. *Id.* (509).

Measure of rates on returned empty cereal-beverage containers lower than on new containers can not be made the subject of any hard and fast rule, but must depend, as do all rates, upon facts and circumstances of record, taking into consideration low value of the commodity, volume of movement, and other material elements. *Bradley & Woertz v. N., C. & St. L.*, 512 (515).

Mere rate comparisons without a showing of conditions under which rates were established, volume of movement, or that transportation circumstances and conditions are substantially similar, are not helpful in determining reasonableness of rates on particular commodities. *Salt Lake Potash Co.*, 87 I. C. C. 695. *Chevrolet Motor Co. v. Director General*, 544 (546).

Rates prescribed in *Mississippi Valley case*, 64 I. C. C. 306, were not prescribed as standards of reasonable maximum rates, but primarily to bring about an adjustment in harmony with requirements of section 4 of the act and at same time conserve revenues of carriers. Nor may such rates be used as a measure of rates between points in the Southeast. *Paper Boxes between Southeastern Points*, 559 (563).

A joint rate which does not violate the aggregate-of-intermediates clause of the fourth section may still be unreasonable because it exceeds the through charges which would be applicable in event of its cancellation. *Omaha Chamber of Commerce v. A., B. & A.*, 583 (585-586).

Comparisons based upon distance alone have little probative value in measuring reasonableness of rates. This is particularly true where rates compared are group rates in establishment of which element of distance must be subordinated to other considerations. *Louisville Coöperation Co. v. L. & N.*, 593 (594).

Joint rates which exceed the aggregate of intermediates are prima facie unreasonable, but the presumption is rebuttable. *La Crosse Chamber of Commerce v. Director General*, 602 (603).

It does not follow that because rate to an intermediate point is higher than to a more distant point, the higher rate is therefore unreasonable under section 1 of the act. *Forrester-Nace Box Co. v. Director General*, 665 (666).

Upon contention that class rates are properly applicable on isolated shipments in lieu of commodity rates as latter are established to take care of sustained movements, *Held*: Shippers are entitled to reasonable rates, and fact that there have been relatively few shipments of a commodity between certain points is not the sole determinative factor. *Parkersburg Rig & Reel Co. v. M. P.*, 667 (669).

MILEAGE RATES. *See* DISTANCE RATES.

MILLING IN TRANSIT. *See* TRANSIT ARRANGEMENTS,

93 I. C. C.

MINIMUM WEIGHT.

In General: Commission has same authority and duty with respect to removal of unjust discrimination brought about by different c. l. minima as it has in case of unjust discrimination against interstate traffic caused by State rates. *Kansas City Millers' Club*, 50 I. C. C. 170, 182. *New Mexico Corp. Commission v. A., T. & S. F.*, 43 (47).

Alfalfa hay: Minimum weights on, from points in New Mexico to points in Texas, higher than from competing points in Texas to same destinations found unreasonable and unduly prejudicial to shippers in New Mexico, unduly preferential of shippers in Texas, and unjustly discriminatory against interstate commerce. Maximum minimum weights suggested. *New Mexico Corp. Commission v. A., T. & S. F.*, 43.

Junk: Proposal to apply a minimum of 50,000 pounds to mixed c. l. shipments of junk in western trunk-line territory found not justified. Only one article in entire junk list carries this minimum in straight carloads, and record demonstrates that minimum proposed can only be loaded in exceptional cases. *Junk in Mixed Carloads*, 263.

MISROUTING.

Lumber from Demopolis, Ala., to Louisville, reconsigned to Bluefield, W. Va., moved under combination rates. Over another practicable route beyond Louisville a lower combination applied to Roanoke, Va., and under rule 5 (b) of Tariff Circular 18-A such lower rate was available to Bluefield. *Held*: Shipment misrouted in that it was not forwarded from Louisville over lower-rated route. Reparation awarded. *Standard Lbr. Co. v. Director General*, 58.

Bill of lading was written, at request of complainant's agent, by station agent of originating line, and showed routing via "N. & W." Carrier's agent asserted that complainant's agent orally requested routing via a higher-rated route, that routing "N. & W." was erroneously inserted by him on bill of lading, and that car was waybilled according to oral instructions. Complainant's agent denies specifying any other routing than that shown on bill of lading. *Held*: In view of conflicting statements, which are irreconcilable, specifications on bill of lading must control. Shipment found misrouted and reparation awarded. *McClintick & Co. v. P. M.*, 69.

Consignors specified certain carriers in bills of lading without stating that such specification was with reference merely to delivery. In connection with originating lines, carriers so named formed a through route to destination. Contention that initial carrier should have sent shipments over cheaper intrastate routes, *Held*: Where consignor specifies routing by naming a carrier which, in connection with originating line, forms a through route to destination, initial carrier can not be charged with misrouting if it bills shipment over that route instead of selecting a cheaper route in which those carriers participate but with a third carrier intervening. It was customary to use interstate rather than intrastate routes necessitating use of a third carrier, and carriers were justified in assuming movement over usual routes was desired. Shipments found not misrouted. *Wright & Wimmer v. C., T. H. & S. E.*, 183.

MISROUTING—Continued.

Negligence of carrier in failing to transmit promptly to its connection complainant's telephonic request for diversion, resulting in shipment moving through to originally billed destination and thence back-hauled through point at which diversion could have been effected, found to have resulted in misrouting and collection of overcharges. Under wording of defendant's tariff which provided that diversion requests must be made or confirmed in writing there was a holding out to shippers that such requests in form other than in writing would be accepted, and complainant complied literally therewith by confirming in writing its telephonic request and surrendering bills of lading. Telephonic instructions were accepted by defendant's agent, and record does not show that delay on part of complainant in confirming request in writing in any way contributed to carrier's failure to either divert shipment or transmit request to its connection. Reparation awarded. *Humble Oil & Refining Co. v. N. Y. C.*, 331.

Shipment delivered to carrier unrouted. Tariff provided two routes carrying proportionals, the higher applying "all-rail," the lower "rail-lake-and-rail." Carriers forwarded shipment all-rail and assessed higher proportional. *Held*: Misrouting resulted as carriers operated car-ferry routes over which lower "rail-lake-and-rail" proportional applied. A car-ferry route is an "all-rail" route, and expression "rail-lake-and-rail route" describes a rail-and-water break-hulk route. Such terms, however, were not so used in tariff, no steamship line being named as a participating carrier, thus rendering rail-lake-and-rail rate inapplicable over a break-bulk route. Expression "rail-lake-and-rail" merely distinguished car-ferry routes from those literally all-rail, and it was carrier's duty, in absence of instructions, to have forwarded over lower-rated car-ferry route. Reparation awarded. *Bergstrom Paper Co. v. Director General*, 591.

MISTAKES. *See* ERRORS AND MISTAKES.

MIXED CARLOADS.

Proposed elimination of wire, nails, and staples from list of iron and steel articles permitted to be shipped in mixed carloads, for purpose of making tariffs in southwestern territory uniform, found not justified. Respondents' endeavor is prompted by requests of parties who desire an adjustment that will force movements through Texas jobbers. Increased rates can not be justified solely upon showing of desire for uniformity in tariff provisions. Moreover, shippers or dealers, whose interests are not to be considered subordinate to others, avail themselves of mixtures now in effect, and desire of other dealers to bring about purchase from them is no warrant for increasing transportation burden to be borne by consumers. Iron and Steel Articles to Southwest, 31.

Rates on grapefruit in mixed carloads with oranges, from Jacksonville to Montana points, found not unreasonable. In the *Lindsay & Co. cases*, 25 I. C. C. 424 and 33 I. C. C. 150, reasonable rates on oranges and grapefruit were prescribed which if subjected to general advances and reductions would result in rates materially higher than present rates. Complainant contended for lower rate established by director general when a group rate applicable on commodities in general from north Atlantic coast was extended to include Florida. But no special thought was given to reasonableness of the rate on oranges from Florida when that basis was established and it can not be accepted as a reasonable basis on grapefruit and oranges from Jacksonville. *Devine & Asselstine v. A. C. L.*, 174.

MIXED CARLOADS—Continued.

Proposal to apply a minimum of 50,000 pounds to mixed c. l. shipments of junk in western trunk-line territory found not justified. Only one article in entire junk list carries this minimum in straight carloads, and record demonstrates that minimum proposed can only be loaded in exceptional cases. *Junk in Mixed Carloads*, 263.

Contention that on mixed c. l. shipments of livestock unreasonable rates were assessed because of enforcement of mixed-carload rule, which provides that highest rate and highest minimum applicable to any class of stock contained in the car shall govern, not sustained. This was the usual method of computing rates on mixed carloads throughout United States generally, its application to live stock shipments had been previously approved by commission, and while subsequently in 81 I. C. C. 305, a different rule for the future was prescribed, this finding was not intended to apply retroactively and does not establish unreasonableness in the past with respect to shipments here considered. *Dickerson v. Director General*, 304 (307-308).

NEGLIGENCE.

Negligence of carrier in failing to transmit promptly to its connection complainant's telephonic request for diversion, resulting in shipment moving through to originally billed destination and thence back-hauled through point at which diversion could have been effected, found to have resulted in misrouting and collection of overcharges. Under wording of defendant's tariff which provided that diversion requests must be made or confirmed in writing there was a holding out to shippers that such requests in form other than in writing would be accepted, and complainant complied literally therewith by confirming in writing its telephonic request and surrendering bills of lading. The telephonic instructions were accepted by defendant's agent, and record does not show that delay on part of complainant in confirming request in writing in any way contributed to carrier's failure to either divert shipment or transmit request to its connection. Reparation awarded. *Humble Oil & Mfg. Co. v. N. Y. C.*, 331.

NEW AND SECONDHAND ARTICLES.

Shipments of used Army knapsacks, in cases, were billed as old rags, in cases, and charges were collected at rate applicable on old rags. When shipments moved knapsacks or haversacks, in boxes, any quantity, were rated first class. *Found*: Commission having repeatedly declined to sanction principle that old and secondhand articles are necessarily entitled to lower ratings than same articles when new, first-class rates were legally applicable and shipments were undercharged. *Levene's Sons v. D., L. & W.*, 103.

Application of existing classification ratings on steel files, l. c. l., to shipments of used or worn files, returned for reconditioning, found not unreasonable or otherwise unlawful. Practice of applying same rating on used as on new files extends to all other kinds of tools and machinery, such as agricultural implements, etc., and many of such articles are shipped secondhand or are returned to manufacturers for repairs or reconstruction. Moreover, in *Minneapolis Traffic Asso.*, 23 I. C. C. 432, 437, the commission pointed out the difficulties which would be encountered in practical application of different rates on old and on new articles of same kind. *Continental File Co. v. P., C., C. & St. L.*, 373.

NEW AND SECONDHAND ARTICLES—Continued.

With respect to cereal-beverage trade it is self-evident that return of empty bottles is contemplated by both consignor and consignee, and for that reason and on account of nonadaptability of these containers to other uses practice of according rates lower than those on new containers should not be discouraged. *Bradley & Woertz v. N., C. & St. L.*, 512 (515).

Measure of rates on returned empty cereal-beverage containers lower than on new containers can not be made the subject of any hard and fast rule, but must depend, as do all rates, upon facts and circumstances of record, taking into consideration low value of the commodity, volume of movement, and other material elements. *Id.* (515).

NOTICE. *See also* STATUTORY NOTICE.

Shipment moved to point at which consignee maintained no office. Carrier mailed notice of arrival on postcard which was not delivered, and later wrote letter to consignor requesting disposition orders. Had defendant complied with tariff requirement which provided that notice of unclaimed freight should be by telegram instead of by letter it would have been received by consignor same day as sent. Defendant's letter, therefore, may not be regarded as a notice prior to date of its receipt. Shipment found overcharged to extent demurrage and penalty charges exceeded those which would have accrued had tariff provision been strictly complied with. Reparation awarded. *Standard Lbr. Co. v. Director General*, 58.

OPERATING AND TRANSPORTATION CONDITIONS.

Mere fact that lower rates prevail in the East than in the Northwest is not proof of undue prejudice when difference in transportation conditions is borne in mind. *Dickerson v. Director General*, 304 (307).

OPPOSITE DIRECTION. *See* BOTH DIRECTIONS.

ORDER NOTIFY.

Export shipments originally moved on domestic bills of lading, sailing date and space on steamer having been previously reserved. Domestic bills were exchanged for export bills, latter bearing notation "order notify" consignees at foreign ports. Due to refusal of shipments by vessel on which space reserved they were stored and subsequently exported on other vessels. *Held*: Following *U. S. Steel Products Co.*, 88 I. C. C. 57, demurrage and storage charges assessed, but not paid, found illegal. Applicable tariff provided in such cases for giving of advance notice to notify party at port of exit that carrier is ready to make delivery, but there were no parties at port to be notified and no demurrage or storage could therefore accrue. *American Steel Export Co. v. Director General*, 235.

ORDERS OF COMMISSION. *See* FINDINGS AND ORDERS OF COMMISSION.

OUT-OF-POCKET COSTS.

Proposed reduced charges for handling fertilizer, fertilizer materials, cement, and salt at South Atlantic and certain Gulf ports, found justified. Present charges are so high that they have resulted in practices by shippers which obviate necessity for railroad handling of these commodities and a consequent heavy loss of revenue. Proposed charge is not unreasonably high nor is there warrant for holding that it is unduly prejudicial. Moreover, cost figures submitted by carriers while tending to show that reduced charges will probably not cover all costs if cost is to be ascertained by distributing all burdens over all traffic, indicate that they will produce considerable return in excess of direct out-of-pocket costs of the services. *Handling Charges on Cement, Fertilizer, and Salt*, 640.

OVERCHARGES.

Complaint seeking reparation, as overcharges, based upon violations of long-and-short-haul provision of section 4 of the act, dismissed following *Portland Seed Co. case*, 264 U. S. 403. *Pacific Adjustment Co. v. Director General*, 50.

Complaint seeking reparation, as overcharges, based upon violations of aggregate of intermediates provision of section 4 of the act, dismissed following *Portland Seed Co. case*, 264 U. S. 403. While case cited did not involve violations of that clause, the court's reasoning is conclusive as applied to it as well as to long-and-short-haul clause. Published rates must be charged and paid whether lawful or not; and while an unlawful rate may subject carrier to payment of penalties to the Government, its charging does not give shipper any right save to recover "the full amount of damage sustained in consequence of any such violation of the provisions of this act." It would be going too far to find that unauthorized publication established the lower aggregate of intermediate rates as maximum permissible charge, and only rate which could be demanded. *Id.* (50).

While commission has consistently found that a joint rate that exceeds the aggregate of intermediate rates over the same line or route is prima facie unreasonable, it has never found that the charging of such a rate is an overcharge. Moreover, it has always maintained that "the statute requires rigid observance of the tariff, without regard to inherent lawfulness of rates specified." *Id.* (52).

Shipment moved to point at which consignee maintained no office. Carrier mailed notice of arrival on post card which was not delivered, and later wrote letter to consignor requesting disposition orders. Had defendant complied with tariff requirement which provided that notice of unclaimed freight should be by telegram instead of by letter it would have been received by consignor same day as sent. Defendant's letter, therefore, may not be regarded as a notice prior to date of its receipt. Shipment found overcharged to extent demurrage and penalty charges exceeded those which would have accrued had tariff provision been strictly complied with. Reparation awarded. *Standard Lbr. Co. v. Director General*, 58.

Large car ordered, but carrier furnished two small cars for its own convenience. Charges collected at c. l. rate, based on applicable minimum on first car and at actual weight on second car, found illegal, as exceptions to classification provided that where carrier furnishes two small cars in lieu of larger car ordered, charges should be assessed at actual weight, subject to minimum for car ordered. Complainant's shipment exceeded this minimum and could have been loaded in car ordered. Shipment found overcharged and reparation awarded. *Goodpasture v. N., C. & St. L.*, 65.

Shipment of sorghum seed from Kansas City to Montgomery, specifically routed by shipper "C. of G. at Birmingham, Ala.," and shipment so moved. Combination rate based on Memphis assessed. Had shipment moved to Birmingham, thence over Southern Ry. to Mobile, and back through Birmingham to destination lower combination would have applied. *Held*: Notwithstanding that route through Mobile was not designated by shipper, it was duty of carrier under rule 5(b) of Tariff Circular 18-A to apply the Mobile rate, which was applicable to and from Birmingham, the interchange point directly intermediate to base point upon which lowest combination made. Shipment found overcharged and reparation awarded. *Schloss & Kahn Grocery Co. v. St. L.-S. F.*, 67.

OVERCHARGES—Continued.

Charges, based on estimated weight of green lumber, collected on shipment of yellow-pine lumber, found inapplicable to extent they exceeded charges based on estimated weight of dry lumber. Shipment here involved was accumulated in complainant's yard over a period of six months, and notwithstanding absence of any definite rule which may be followed in determining when lumber passes from green to dry stage, material comprising this shipment may not be classed as green lumber, and was therefore subject to estimated weight on seasoned lumber. Shipment found overcharged and reparation awarded. *Leake & Goodlett v. St. L.-S. F.*, 73.

Class rate on l. c. l. shipment of iron pipe fittings from Barberton, Ohio, to Duluth, destined to Virginia, Minn., found inapplicable to extent it exceeded lower commodity rate published in same tariff on "iron and steel articles, c. l.," which lower rate by tariff note applied on a list of commodities in which pipe fittings were included without limitation as to whether c. l. or l. c. l. While carriers intended to omit all reference to l. c. l. rates in connection with lower commodity rate, through oversight this was not done. Moreover, erroneous publication of rates does not justify a departure therefrom and intention of framers is not controlling. Reparation awarded. *Murray-Egan-McLeod Co. v. P. R. R.*, 79.

Complaint alleging that switching charges collected in addition to line-haul rates, assessed under tariff items properly filed with commission, found not to present an overcharge claim within meaning of section 6 of the act. See *Flushing Farmers' Elevator Co.*, 87 I. C. C. 9, 10. *Shanard Elevator Co. v. M. E. Ry.*, 151 (153).

Shipments moved under combination rates and charges were collected on basis of separate components. Tariff of one participating carrier contained the combination rule, which provided a method for constructing through rates made on combinations, but other participating carrier made no reference to the rule nor carried a similar rule in its tariff. Nor did tariff containing the rule specifically restrict its application so as to render it inoperative in connection with traffic here involved. *Held*: Carrier publishing the rule must protect aggregate rate constructed in conformity therewith, and other carrier is entitled to retain its full local. Refund of overcharges directed. *Armour Fertilizer Works v. S. Ry.*, 186.

Shipments moved under combination rates. Tariff governing second component carried the combination rule which provided a method for constructing through rates made on combination. Tariff of originating carrier carried no similar rule, nor made reference to any tariff in which such rule was carried. *Held*: There was a holding out to shipper of rates constructed in accordance with the rule which publishing carrier must protect. See *Sligo case*, 62 I. C. C. 643. Reparation awarded. *California Cotton & Factorage Co. v. Director General*, 260.

OVERCHARGES—Continued.

Negligence of carrier in failing to transmit promptly to its connection complainant's telephonic request for diversion, resulting in shipment moving through to originally billed destination and thence back-hauled through point at which diversion could have been effected, found to have resulted in misrouting and collection of overcharges. Under wording of defendant's tariff which provided that diversion requests must be made or confirmed in writing there was a holding out to shippers that such requests in form other than in writing would be accepted, and complainant complied literally therewith by confirming in writing its telephonic request and surrendering bills of lading. Telephonic instructions were accepted by defendant's agent, and record does not show that delay on part of complainant in confirming request in writing in any way contributed to carrier's failure to either divert shipment or transmit request to its connection. Reparation awarded. *Humble Oil & Rfg. Co. v. N. Y. C.*, 331.

Shipments moved under combination rates, each factor of which was increased under General Order No. 28 of director general. Tariff of one participating carrier contained the combination rule which provided a method for constructing through rates made on combination, which rule was not published in tariff of other participating carrier until after shipments moved. *Held*: Where one tariff used in making combination rates on through shipments contains a rule that such rates will be subject to a single increase, there is a holding out to shipper of rate so constructed which publishing carrier must protect. *Sligo Iron Store Co.*, 62 I. C. C. 643, 73 I. C. C. 551. Shipments found overcharged and reparation awarded. *Southwestern Shipbuilding Co. v. Director General*, 337.

Shipments of corn from defined territory in South Dakota to western destinations, principally in the State of Washington, found overcharged. While it was intention of carriers to restrict routing provisions of tariffs carrying lower rates so as to exclude certain intermediate carriers embraced in route of movement, and to restrict routing via their own lines, they did not do so in clear and unequivocal language. Reparation awarded. Routing via North Dakota Junctions, 411.

On shipments moving during Federal control charges were collected on basis of a combination rate both factors of which had been increased under General Order No. 28 of director general. Tariff carrying one factor contained a provision that where charges on through continuous movements were based on combinations of separately established rates increases authorized by the general order should be applied to combination in effect on June 24, 1918. *Held*: Following *Sligo Iron Store Co.*, 62 I. C. C. 643; 73 I. C. C. 551, a through combination plus a single increase was applicable on the shipments and they were accordingly overcharged. *Delta Beet Sugar Corp. v. Director General*, 547.

Applicable tariff provided that demurrage would not be assessed for detention where carrier's agent demanded payment of transportation charges in excess of tariff authority. Charges billed against car after its arrival at reconsigned destination included an admitted overcharge which shipper promptly questioned. *Held*: Billed charges must be regarded as a demand for charges in excess of tariff authority and demurrage was not assessable against the car during period of detention pending controversy over legal charges. See *Birmingham Commission Co.*, 74 I. C. C. 693, and *Conf. Ruling 32*. *Milne Lbr. Co. v. C., C. & St. L.*, 661.

PACKING. *See* CONTAINERS AND PACKING.

PAPER RATES.

Rates on grapefruit, in straight carloads, or in mixed carloads with oranges, from Jacksonville to Montana points, found not unreasonable. Complainant contended for a rate on oranges established by director general when a group rate applicable on commodities in general from north Atlantic coast was extended to include Florida. But no special thought was given to reasonableness of the rate on oranges from Florida when that basis was established, and since no oranges move from Florida to Montana such group rate is in effect a paper rate and can not be accepted as a reasonable basis on grapefruit and oranges from Jacksonville. *Devine & Asselstine v. A. C. L.*, 174.

Proposed increased rates on cotton and cotton regins, uncompressed, any quantity, and on cotton linters, uncompressed, l. c. l., both with carrier's privilege of compressing, from Cairo, Brookport, Gale, and Thebes, Ill., to eastern points, for purpose of restoring the relationship with rates from St. Louis, disturbed when the St. Louis rates were increased but through oversight no similar changes were made in rates from the Illinois points, found not justified. Respondent made no reference to rates under which traffic actually moves to demonstrate reasonableness of the proposed rates, and since the St. Louis rates are paper rates, most of the cotton movement being through Memphis, they have little, if any, probative force in that connection. *Cotton, Linters, and Regins to Eastern Cities*, 453.

PARITY OF RATES.

Proposed increased rates on coke from points in southwestern Virginia, Benham, Ky., LaFollette and Chattanooga, Tenn., to Cincinnati and certain points in the vicinity thereof, and to Maysville, Ky., designed for purpose of restoring a parity of rates from these coke-producing points, disrupted following the general increases authorized in *Increased Rates*, 1920, 58 I. C. C. 220, found not justified. Although record does not indicate that proposed rate to Cincinnati would be unreasonable, it would result in undue prejudice at that point and in undue preference of other Ohio River crossings where a similar situation exists and where a similar increase is not made. *Coke to Cincinnati Group*, 572.

PARTIES.

On shipments moving during Federal control objection to complaint was raised by director general because one participating carrier was not named as a party defendant; also that since another carrier named was not under Federal control, the commission's jurisdiction does not extend to that portion of the transportation over the latter's line. *Held*: Rate attacked is a joint rate and, even if Federal control had not intervened, it would not have been necessary to name all carriers participating in the transportation as parties defendant. Moreover, under joint rates liability of defendants is joint and several. *Consolidated Coal Co. v. Director General*, 53-54.

Complainant was both consignor and consignee. Shipment was sold f. o. b. destination, purchaser paying freight at destination, as agent for complainant, and deducting it from latter's invoice. *Held*: Complainant is party entitled to recover unreasonable freight charges since he contracted with defendants for carriage and was only party that had privity with them. The only one who can recover is the one that alone was in relation with carrier and from whom carrier took the sum. *Darnell-Taenzer case*, 245 U. S. 531; *Missouri Portland Cement Co.*, 88 I. C. C. 492. *California Cotton & Factorage Co. v. Director General*, 260.

PARTIES—Continued.

Counsel for defendants questioned right of opposing counsel to represent many shippers named as complainants, and also contended that many claims presented are barred by the statute of limitations. But as they admit that some shippers named are bona fide complainants and that some claims are not barred by the statute the commission may proceed to consider the issues without passing upon jurisdictional question as to individual complainants and claims. *Dickerson v. Director General*, 304 (305).

Shipments were billed in name of consignor who was selling agent of complainant. Complainant's name did not appear on any of the transportation papers, but shipments were made for and on its behalf and freight charges were borne by it. Complainant found party entitled to reparation. *Kaw River Sand & Material Co. v. Director General*, 346 (347-349).

Home Accident & Insurance Co. assumed direction of complainants' business and selected a general manager who paid freight charges in complainants' name on shipments consigned to him individually and to a road commissioner from funds advanced by the insurance company. Identity of complainants' company was maintained and all items of expense and merchandise charged to it. Defendants contended that complainants were not real parties in interest, so complainants' counsel moved to amend complaint by making insurance company a party complainant. This was permitted subject to defendants' objections. *Held*: Under facts stated complainant is entitled to reparation, and since insurance company presented no adverse claim, it is unnecessary to pass upon motion to amend. *Edwards Construction Co. v. J., L. C. & E.*, 370 (371-372).

Prior to filing of complaint, assets and liabilities of complainant were assumed by a successor company whose interest was not disclosed until after statute of limitations had run. Upon contention that motion to join successor in interest as co-complainant comes too late, and that lack of interest precludes a recovery of reparation by complainant. *Held*: Following *Plymouth Coal Co.*, 56 I. C. C. 699, if complainant is party injured by a violation of the act the award of reparation should be made in its favor, and it may not be denied reparation because of an assignment *pendente lite* under which no adverse rights are asserted. Fact that assignment took place prior to filing of complaint warrants no different conclusion. *See* 68 I. C. C. 138; 83 I. C. C. 557. *Delta Beet Sugar Corp. v. Director General*, 547 (549-550); *Same v. Same*, 551 (553-554).

Formal complaint filed by same company filing informal proceeding bore signatures of complainant's attorney and of the general traffic manager of another company which bought complainant's entire stock. Upon contention that formal complaint is barred because filed by successor company, and does not represent a formal complaint filed by same company named in the informal proceeding, *Held*: While formal complaint carries signature of general traffic manager of the successor company without showing agency, it is also signed by complainant's attorney, and as presented is properly signed and not barred. *Forrester-Nace Box Co. v. Director General*, 665.

PENALTY.

Storage and demurrage charges are not assessed primarily for revenue purposes and are not based upon a fair rental value of equipment, but are rather in nature of penalties to prevent wasteful and extravagant use of equipment. *Coastwise Lbr. & Supply Co. v. P. R. R.*, 288 (289).

PER CAR RATES.

Director general canceled "per car" rates on livestock and established rates in cents per 100 pounds. After Federal control terminated carriers restored the "per car" basis. *Found*: Charges on shipments moving during period when rates in cents per 100 pounds were in effect found not unreasonable. Complainants depended almost entirely upon showing that increases resulted from the change but they furnished no comparisons by which reasonableness may be judged. Even if it be granted that increased rates resulted, this alone would not prove them unreasonable, for such increases might have been justified by increased cost of transportation and increased value of livestock during period under consideration. *Dickerson v. Director General*, 304.

PERCENTAGE RATES.

Rates on steel billets from South Kearney, N. J., Baltimore, Md., and Philadelphia, Pa., to Huntington, W. Va., substantially 82 per cent of the New York-Chicago rate, which basis was established to Huntington following *Jobbers' & Mfrs.' Bureau of Huntington*, 57 I. C. C. 64, found not unreasonable or unduly prejudicial because not related to rate to Pittsburgh as 82 is to 60. Earnings and transportation conditions are matters to be considered regardless of the percentage formula, and earnings under rates assailed compare favorably with those under rates to other c. f. a. territory destinations for similar distances. *West Virginia Rail Co. v. P. R. R.*, 215.

The commission can not accept the percentage formula as a measure of reasonableness of rates or as a criterion of their lawfulness in other respects, matters to be considered being rather earnings and transportation conditions. *General Chemical Co.*, 83 I. C. C. 582. *Toledo Cooker Co. v. N. & A. Ry.*, 271 (273-274).

Fifth-Class rates on fabricated steel tank material from Haynesville, La., to El Dorado and Smackover, Ark., and from Couchwood, La., to Smackover, found unreasonable to extent they exceeded 60 per cent of fifth class prescribed in the *Shreveport case*, 48 I. C. C. 312, 354, and in *Galveston Commercial Asso.*, 57 I. C. C. 390, for application on iron and steel articles between points in same general territory. Reparation awarded. *Parkersburg Rig & Reel Co. v. M. P.*, 667.

PITTSBURGH SWITCHING DISTRICT. *See* SWITCHING DISTRICTS.

PLACEMENT. *See* DELIVERY; SPOTTING CARS.

POSTING. *See* FILING AND POSTING.

POWER OF COMMISSION. *See* JURISDICTION.

PREFERENCES AND PREJUDICES. *See also* DISCRIMINATION.

In General:

Mere fact of participation by carrier in joint rates in connection with which transit is allowed at points on other lines does not make it guilty of undue prejudice against shippers or localities on its own line. *C. R. R. Co. v. U. S.*, 257 U. S. 247. *Lange & Crist Box & Lbr. Co. v. B. & O.*, 207 (208).

Mere fact that lower rates prevail in the East than in the Northwest is not proof of undue prejudice when difference in transportation conditions is borne in mind. *Dickerson v. Director General*, 304 (307).

The commission has consistently refused to extend the rate-breaking system to communities which alleged that they were unduly prejudiced because of rate breaks at other points with which they competed. *Sioux City Terminal Elevator Co.*, 23 I. C. C. 98, 27 I. C. C. 457, and other cited cases. *Mississippi R. R. Comm. v. A. & V.* 435 (444).

PREFERENCES AND PREJUDICES—Continued.

Car Distribution: Findings in former report, 80 I. C. C. 520, that practice of carriers in assigning private cars, and system or foreign-line cars for railway fuel, to bituminous-coal mines in excess of ratable share contemporaneously distributed to bituminous-coal mines upon their lines, which do not receive assigned cars, was unjust, unreasonable, discriminatory, and unduly prejudicial to mines not receiving assigned cars in favor of mines furnished such cars in excess of ratable proportion, and that cars specially placed by order of commission under provisions of section 1 (15) of the act may properly be treated as assigned cars, and need not be taken into account in determining the ratable distribution when the order of placement so requires, affirmed. Assigned Cars for Bituminous Coal Mines, 701.

Commodities:

Box material: Rates on wire-bound box material found unduly prejudicial to extent they exceed rates contemporaneously applicable on box shooks. *Lange & Crist Box & Lbr. Co. v. B. & O.*, 207.

Cabbage: Rates on, in bulk, found not unreasonable or unduly prejudicial as compared with rates on potatoes or on mixed carloads of potatoes and other class C vegetables, including cabbage. Rates on cabbage and other class C vegetables in territory here involved are uniformly higher than on potatoes; no instance is cited where rates from point here involved are as low on cabbage as on potatoes; cabbage is more valuable, loads lighter, and is more difficult to protect from freezing; and rates assailed compare favorably, distance considered, with rates heretofore found not unreasonable or prescribed by commission. *Anderson Commission Co. v. C., R. I. & P.*, 241.

Iron ore, ground: Rates on, found not unreasonable or unduly prejudicial as compared with rates on crude iron ore. Crude iron ore is iron ore as it is mined, whereas ground iron ore is a manufactured product which, when ground in oil becomes paint. Crude iron ore moves in open-top equipment, ground iron ore is shipped in paper sacks, and, in order to avoid damage in transit, is loaded in watertight box-car equipment, free from nails and slivers. Circumstances and conditions surrounding transportation of these commodities are so dissimilar as to warrant lower rates on crude than on ground iron ore. *Winters Metallic Paint Co. v. C., M. & St. P.*, 427.

Interchange of Traffic: Practice of Peoria & Pekin Union Ry., in assessing charges at and in the vicinity of Peoria, Ill., for interchange service between connections with its tenants and rails of the Minneapolis & St. Louis, and St. Louis, Springfield & Peoria, an electric line, while contemporaneously performing a like service between connections with its tenants and rails of C., B. & Q., and Rock Island without charge, found unjustly discriminatory and unduly prejudicial. *Peoria & Pekin Union*, 3 (23).

93 I. C. C.

PREFERENCES AND PREJUDICES—Continued.

Localities:

Arkansas points: Rates on clean rice from milling points in Arkansas to certain destinations in c. f. a., southern, and western territories, to western termini of trunk-line territory, and to points in Oklahoma, found unreasonable and unduly prejudicial in some instances as compared with corresponding rates from New Orleans, Memphis, and interior Louisiana points. Carriers in making rates have largely ignored distances in an effort to somewhat equalize conditions. Right of complainants to natural advantages of their location can not be taken away by rate adjustments and wide differences in distance between the various fields to common destinations must be recognized. Reasonable and nonprejudicial rates and bases prescribed. *Stuttgart Rice Mill Co., v. A. & V.*, 517.

Arthur, Iowa: Rate on pop-corn from, to Chicago, found not unreasonable, but to have been unduly prejudicial in favor of competitors at Odebolt, Iowa, to extent it exceeded rate from the latter point. No damage shown as a direct result of undue prejudice found, and undue prejudice having been removed by reducing rates from Arthur and Odebolt to a common level, no order for future is necessary. *Shotwell Mfg. Co. v. C. & N. W.*, 587.

Cincinnati, Ohio: Proposed increased rates on coke from points in southwestern Virginia, Benham, Ky., LaFollette and Chattanooga, Tenn., to Cincinnati and certain points in vicinity thereof, and to Maysville, Ky., designed for purpose of restoring a parity of rates from these coke-producing points, disrupted following the general increases authorized in *Increased Rates, 1920*, 58 I. C. C. 220, found not justified. Although record does not indicate that proposed rate to Cincinnati would be unreasonable, it would result in undue prejudice at that point and in undue preference of other Ohio River crossings where a similar situation exists and where a similar increase is not made. Coke to Cincinnati Group, 572.

Fort Worth, Tex.: Rates on horses and mules between Fort Worth and points in Arkansas, Kansas, Oklahoma, western Louisiana, southern Missouri, portions of Colorado and New Mexico, and in Texas other than in differential territory, found unreasonable and unduly prejudicial to Fort Worth and unduly preferential of Wichita, Kansas City, St. Joseph, St. Louis, and Oklahoma City. Reasonable and nonprejudicial distance rates prescribed. Horse and Mule Rates in the Southwest, 1924, 479.

Huntington, W. Va.: Rates on steel billets from South Kearney, N. J., Baltimore, Md., and Philadelphia, Pa., to Huntington, substantially 82 per cent of the New York-Chicago rate, which basis was established to Huntington following *Jobbers' & Mfrs.' Bureau of Huntington*, 57 I. C. C. 64, found not unreasonable or unduly prejudicial because not related to rate to Pittsburgh as 82 is to 60. Earnings and transportation conditions are matters to be considered regardless of the percentage formula, and earnings under rates assailed compare favorably with those under rates to other c. f. a. territory destinations for similar distances. *West Virginia Rail Co. v. P. R. R.*, 215.

Jackson, Miss.: Commodity rates from c. f. a. territory to Jackson, found not unreasonable, discriminatory, or unduly prejudicial as compared with those in effect to Vicksburg. *Jackson Traffic Bureau v. A., C. & Y.*, 339.

PREFERENCES AND PREJUDICES—Continued.

Localities—Continued.

Kansas and Missouri points: Rates on wheat from various points in Kansas and Colorado, to Leavenworth, Fort Leavenworth, and Atchison, Kans., and St. Joseph, Mo., milled in transit at Kansas City, Mo.—Kans., found unreasonable and unduly prejudicial to extent they exceeded contemporaneous through rates from and to same points on which milling in transit is allowed at points west of Kansas City. Reasonable rates prescribed and reparation awarded. *Rodney Milling Co. v. M. P.*, 200.

Ladysmith, Wis.: Rates on bituminous coal from mines in Illinois and western Kentucky to Ladysmith found not unreasonable or unduly prejudicial as compared with lower rates to the Twin Cities and Eau Claire, Wis. Rates from origin groups to Ladysmith are lower than scale rates for like distances prescribed in *Holmes & Hallowell Co.*, 69 I. C. C. 11; moreover, in *Lake Dock Coal Cases*, 89 I. C. C. 170, the commission expressed its opinion that rates from southern Illinois fields to Minnesota and Wisconsin points were depressed. *Great Western Paper Co. v. C. & E. I.*, 95.

Norwich, N. Y.: Interstate rate on drugs and medicines from Norwich to New York City, found not unreasonable or discriminatory, but found unduly prejudicial to complainant in favor of competitors at Cleveland, Detroit, Kalamazoo, Holland, Indianapolis, and St. Louis, to extent it exceeds differentials under rates from such competing points herein prescribed. *Norwich Pharmacal Co. v. B. & O.*, 246.

South Fort Smith, Ark.: Rates on zinc ore from points in Oklahoma on Miami Mineral Belt and Northeast Oklahoma railroads, and from trunk-line and junction producing points in Missouri, Kansas, and Oklahoma, to South Fort Smith found not unreasonable but unduly prejudicial in favor of competitors operating zinc-smelting plants at Collinsville, East St. Louis, La Salle, Peoria, and Chicago, Ill., and Grasselli, Ind., to extent that factors of above-named carriers exceeded by more than 0.5 cent, the contemporaneous factors on like traffic to the preferred plants. Nonprejudicial basis of rates prescribed. *Athletic Mining & Smelting Co. v. K. C. S.*, 119.

Turlock, Calif.: Express rate on cantaloupes from Turlock to New York and Boston found unreasonable and unduly prejudicial to extent it exceeded rates contemporaneously applicable from Brawley, Calif., and other Imperial Valley points. A blanket rate on fruits and vegetables applies from all California producing points to certain eastern cities and no justification appears for higher rates from Turlock on cantaloupes, when Brawley and Turlock take same rates on other commodities, especially in view of the slight differences in distance for long hauls here considered. Moreover, transcontinental rail carriers provide same rates from both points on cantaloupes, melons, and other commodities to New York and Boston. Reasonable rates prescribed and reparation awarded. *Gentile Co. v. Am. Ry. Exp.*, 76.

Wichita Falls, Tex., and Oklahoma City, Okla.: Upon reconsideration, former report, 88 I. C. C. 152, wherein it was found that rates on self-propelling freight vehicles from Wichita Falls and Oklahoma City to Galveston and New Orleans, for export, were not unreasonable, but that they were unduly prejudicial in favor of shippers at Chicago and St. Louis, affirmed. *Wichita Motors Co. v. A. & V.*, 635.

PREFERENCES AND PREJUDICES—Continued.

Localities—Continued.

Wichita, Kans., and Kansas City, Mo.: Upon further consideration of *Wichita Board of Commerce*, 60 I. C. C. 536, *Horses and Mules from Kansas City, Mo.*, 69 I. C. C. 97, and *Kansas City Chamber of Commerce*, 89 I. C. C. 22, previous findings modified by finding rates on horses and mules from Wichita and Kansas City to destinations in Arkansas and in certain portions of Louisiana and Texas unreasonable and unduly prejudicial in favor of St. Louis. Reasonable and nonprejudicial bases of rates prescribed. *Horse and Mule Rates in the Southwest*, 1924, 479.

State and Interstate:

Minimum weights on alfalfa hay from points in New Mexico to points in Texas, higher than from competing points in Texas to same destinations found unreasonable and unduly prejudicial to shippers in New Mexico, unduly preferential of shippers in Texas, and unjustly discriminatory against interstate commerce. Maximum minimum weights suggested. *New Mexico Corp. Comm. v. A., T. & S. F.*, 43.

Fourth-class rates on empty returned cement bags and sacks from Texas points to Ada, Okla., found unreasonable and unduly prejudicial as compared with rates of one-half of fourth class contemporaneously in effect on same commodities wholly within Texas and other States; also with similar lower rates on both state and interstate movements of various other empty returned containers in same general territory. Measure of reasonable rates prescribed. *Oklahoma Portland Cement Co. v. A. & S.*, 605.

Transit Arrangements:

Failure of B. & O. to accord wire-bound box material dressing-in-transit arrangements at Clarksburg, W. Va., on traffic originating on its line in West Va., to interstate destinations on its line, while according such arrangements at Cincinnati, at which competitors are located, found to result in undue prejudice. *Lange & Crist Box & Lbr. Co. v. B. & O.*, 207.

Maintenance of reshipping rates on grain and products to and from Memphis without contemporaneously maintaining similar rates to and from Mississippi points found not unduly prejudicial, but in so far as rules, regulations, and practices under which grain or its products may be stopped at Memphis for milling, storing, or other transit services and later reforwarded at less than sums of local rates to and from Memphis, are more favorable than rules, regulations, and practices under which transit service is accorded at Mississippi points, they are unduly prejudicial. *Mississippi R. R. Commission v. A. & V.*, 435.

PRIVATE CARS.

Assessment of demurrage charges on private cars under lease on tracks of lessee found not unreasonable. Tariff rule provided that private cars are exempt from demurrage while on tracks of owner or lessee if owner's or lessee's name is marked on car. Cars here involved were not so marked, and only evidence that cars were under lease to complainant was a letter, which admittedly did not comply with the rule. Complainant had ample notice and actual knowledge of existence of the rule and could have complied therewith by making proper notations on cars. *International Agricultural Corp. v. A. & W. P.*, 189.

PRIVATE CARS—Continued.

Tariff rule governing demurrage on private cars on private tracks, published following the *Private Car case*, 50 I. C. C. 652, defining a private car and requiring full name of owner or lessee to be painted, stenciled, or boarded thereon, in which event car is exempt from demurrage for lessee only, and if name of lessee is not painted, stenciled or boarded on the car, it will be exempt from demurrage for owner only, found not unreasonable. Rule was adopted after mature deliberation, has worked out in practice in a generally satisfactory manner, and no better substitute has as yet been brought to commission's attention. Id. (189).

Fact that commission's finding in *Private Car case*, 50 I. C. C. 652, with regard to demurrage on private cars while standing on private tracks of owners, was of a broad and unlimited nature affords no basis for contention that in publishing the rule in accordance therewith, carriers might not include such reasonable and proper conditions as would tend to facilitate its practical application and prevent abuses. It was not only their right, but their duty to do so. Id. (191).

Findings in former report, 80 I. C. C. 520, that practice of carriers in assigning private cars, and system or foreign-line cars for railway fuel, to bituminous-coal mines in excess of ratable share contemporaneously distributed to bituminous-coal mines upon their lines, which do not receive assigned cars, was unjust, unreasonable, discriminatory, and unduly prejudicial to mines not receiving assigned cars in favor of mines furnished such cars in excess of ratable proportion, and that cars specially placed by order of the commission under provisions of section 1 (15) of the act may properly be treated as assigned cars, and need not be taken into account in determining ratable distribution when order of placement so requires, affirmed. Assigned Cars for Bituminous Coal Mines, 701.

Fundamental principle which has governed the commission in dealing with private cars is that such cars, being paid for by carriers through allowances to their owners, are to be treated as part of the carrier's equipment, and may not be so used as to bring about unjust discrimination or unreasonable practices. Id. (729).

The act not only confers authority upon the commission to restrict the preferential use of private cars as was done in *Hocking Valley case*, 12 I. C. C. 398, and *Traer case*, 13 I. C. C. 431, but authorized the commission to prohibit altogether such preferential use. *U. S. v. New River Co.*, 265 U. S. 533, and cases there cited. Id. (729-730).

Private cars which are paid for by carriers for use and are used on their lines are clearly "facilities possessed," and come within broad powers conferred upon commission by the statute to prevent unjust discrimination. Id. (730).

Contention of private-car owners that they are entitled to unrestricted use of their cars unless this involves some preferential use of facilities other than cars, not sustained following *Rail & River Coal Co.*, 14 I. C. C. 86, 92. Id. (730).

In determining upon a just and workable car distribution rule, the commission must recognize fact that car shortages result from a general shortage in facilities, including terminals, motive power, etc., and that to permit private-car owners to have their cars placed at designated mines in excess of pro rata allotment means that private-car owners will receive more than their fair share of those transportation facilities which they do not own, while to require pro rata distribution of cars is to bring about a just and nonpreferential distribution in conformity with fundamental requirements of the act. Id. (732).

PRIVATE CARS—Continued.

Contention that use of private cars during car-shortage periods releases railroad cars for commercial mines, which otherwise would have to be placed at private-car mines overlooks fact that particularly in time of shortage the mine operator is entitled to an equitable rationing of transportation facilities at hand, and that equality is vastly more important to him than a slight addition to his allotment effectuated by giving his neighbor and competitor a better car supply. Furthermore, if private cars should be withdrawn from carrier service and remaining car supply should be inadequate, the commission has power under the act to require carriers to furnish an adequate supply. *Id.* (736-737).

PRODUCTION AND MARKETING COSTS.

It is not the commission's function to equalize milling costs. *Stuttgart Rice Mill Co. v. A. & V. Ry.*, 517 (528).

PROOF AND EVIDENCE. See also BURDEN OF PROOF.

Complainant did not present proof of payment and bearing of freight charges due to its witness not being available. *Found:* That unless further hearing is requested within 10 days after service of report its complaint will be dismissed for want of prosecution. *Jones & Laughlin Steel Co. v. P. & L. E.*, 637 (639).

PROPORTIONAL OR RESHIPPING RATES. See also FACTOR.

Rates on grain and products from interior points in Texas, Oklahoma, Kansas, Nebraska, Colorado, Iowa, Minnesota, Indiana, Illinois, and Missouri, and reshipping rates on the same commodities from reshipping points in States named to points in Mississippi found not unreasonable. *Mississippi R. R. Commission v. A. & V. Ry.*, 435.

Maintenance of reshipping rates on grain and products to and from Memphis without contemporaneously maintaining similar rates to and from Mississippi points found not unduly prejudicial, but in so far as the rules, regulations, and practices under which grain or its products may be stopped at Memphis for milling, storing, or other transit services and later reforwarded at less than sums of local rates to and from Memphis, are more favorable than the rules, regulations, and practices under which transit service is accorded at Mississippi points, they are unduly prejudicial. *Id.* (435).

PROTECTIVE SERVICE.

Specific commodity express rates and refrigeration charges on strawberries from points in Louisiana to destinations in Oklahoma, Kansas, and Missouri, found not unreasonable as compared with lower rates and charges to selected destinations in different sections of the country, including large consuming centers such as Chicago, St. Louis, Kansas City, Cleveland, and Philadelphia, or with rates and refrigeration charges from Alabama and Texas points to destinations here considered. Volume of movement to large markets is greatly in excess of that to points here considered and record discloses no movement of strawberries from Alabama and Texas points. Moreover, single rates selected from large groups or average of a few rates taken from groups embracing many points do not afford a fair comparison in measuring reasonableness of rates attacked. *Dawson Produce Co. v. Am. Ry. Exp.*, 390.

PUBLIC INTEREST.

The public interest is not conserved by shutting out, by denial of joint rates, a miller from markets which he can reach by routes not necessitating performance of a greater total service for him than service over present routes over which joint rates apply unless some substantial right of carriers is hereby invaded. On the other hand, the commission would clearly not be justified in attempting to neutralize the disadvantage of geographical location by requiring wasteful service or additional service without adequate compensation, although shipper may be in dire need. *Flory Milling Co. v. C. N. E.*, 129 (134).

PURPOSE OF ACT. *See* CONSTRUCTION OF STATUTE.

RAIL AND WATER.

Rates on steel grinding balls moving water-and-rail from Chrome, N. J., to Ada, Okla., via Galveston, found not unreasonable or in violation of aggregate-of-intermediates clause of section 4 of the act. Tariffs in effect provided for alternative application of maximum rates, whereby rates to Deming, N. Mex., and Clifton, Ariz., would apply if lower than rate to Ada. The Clifton and Deming rates, however, were restricted to routes other than route of movement, and application of the alternative rule was contingent upon specific reference being made to it in connection with rates to destinations in the tariff, and no such reference was made in connection with rate to Ada. Moreover, rate from point of origin to Deming was higher than rate to Ada. *Oklahoma Portland Cement Co. v. A., T. & S. F.*, 203.

The commission has power under section 6 (13-b) of the act to establish through routes between rail and water carriers and prescribe maximum rail-and-water and rail-water-and-rail rates over the rail and water lines even though the water line is not used under a common control, management, or arrangement for continuous carriage or shipment. *Houston Cotton Exchange v. A. & A. R. R. Corp.*, 268.

Contention that section 15 (3) and section 6 (13), (13a), and (13b) of the act are qualified by section 1 (1a) so that they relate to transportation partly by rail and partly by water only when both are used under a common control, management, or arrangement for continuous carriage or shipment, not sustained. This would lead to absurd conclusion that commission is enabled to establish a physical connection at a dock between a rail carrier and a water carrier only where water carrier already has an arrangement for continuous service with the rail line. *Id.* (270).

Shipment delivered to carrier unrouted. Tariff provided two routes carrying proportionals, the higher applying "all-rail," the lower "rail-lake-and-rail." Carriers forwarded shipment all-rail and assessed higher proportional. *Held*: Misrouting resulted as carriers operated car-ferry routes over which lower "rail-lake-and-rail" proportional applied. A car-ferry route is an "all-rail" route, and expression "rail-lake-and-rail route" describes a rail-and-water break-bulk route. Such terms, however, were not so used in the tariff, no steamship line being named as a participating carrier, thus rendering the rail-lake-and-rail rate inapplicable over a break-bulk route. Expression "rail-lake-and-rail" merely distinguished car-ferry routes from those literally all-rail, and it was carriers' duty, in absence of instructions, to have forwarded over the lower-rated car-ferry route. Reparation awarded. *Bergstrom Paper Co. v. Director General*, 591.

Ordinarily the expression "rail-lake-and-rail route" is used to describe a rail-and-water break-bulk route. *Id.* (592).

RAIL-LAKE-AND-RAIL. *See* RAIL-AND-WATER.

RAILWAY FUEL. *See* COMPANY MATERIAL.

RATE-BREAKING POINTS.

The commission has consistently refused to extend the rate-breaking system to communities which alleged that they were unduly prejudiced because of rate breaks at other points with which they competed. *Sioux City Terminal Elevator Co.*, 23 I. C. C. 98, 27 I. C. C. 457, and other cited cases. *Mississippi R. R. Comm. v. A. & V.*, 435 (444).

RATE COMPARISONS. See **COMPARATIVE RATES.**

RATE MAKING.

Value of commodity transported is an element in rate making aside from risk of loss or damage, because it serves to measure value of service rendered shipper. Released Rates on Stone in Southeast, 90 (94).

Whether, as a matter of rate making, in constructing through rates on the distance-scale basis, an allowance of a given number of miles should be made for river transfer service, or arbitraries in cents per 100 pounds be added to the rate computed on basis of strict mileage, is incapable of mathematical demonstration. Mileage for Mississippi Crossings, 462 (475).

There is a clear distinction between making different rates for application between the same point on the same commodity conditioned solely upon use to which the commodity is to be put, a practice which the commission has frequently condemned, and making different rates on different commodities and taking into consideration, along with other factors, the general use to which the respective commodities are put for purpose of determining the applicable rate. Lime from Eastern Trunk Line Points, 617 (630).

RAW MATERIALS. See **MANUFACTURED ARTICLES.**

REASONABLENESS OF RATES. See **MEASURE OF RATES.**

RECIPROCAL SWITCHING. See **SWITCHING.**

RECONSIGNMENT AND DIVERSION.

Shipment of lumber from Lonoke, Ark., was originally consigned to Deer Creek, Okla. Diversion requested to Nowata, Okla., could not be effected until after shipment passed point through which the short-line route made. Combination rates based on Winfield, Kans., assessed found not unreasonable as compared with rates contemporaneously in effect via the direct route; nor were individual factors comprising the combination unreasonable as compared with rates between other points instanced by complainant. Shipment here involved was unusual and moved over the circuitous route at instance and for convenience of complainant. While ton-mile earnings thereunder are somewhat higher than those instanced, they can not be said to have been excessive for service performed. *Nebraska Bridge Supply Co. v. A., T. & S. F.*, 301.

Negligence of carrier in failing to transmit promptly to its connection complainant's telephonic request for diversion, resulting in shipment moving through to originally billed destination and thence back-hauled through point at which diversion could have been effected, found to have resulted in misrouting and collection of overcharges. Under wording of defendant's tariff which provided that diversion requests must be made or confirmed in writing there was a holding out to shippers that such requests in form other than in writing would be accepted, and complainant complied literally therewith by confirming in writing its telephonic request and surrendering bills of lading. The telephonic instructions were accepted by defendant's agent, and record does not show that delay on part of complainant in confirming the request in writing in any way contributed to carrier's failure to either divert shipment or transmit the request to its connection. Reparation awarded. *Humble Oil & Rfg. Co. v. N. Y. C.*, 331.

RECONSIGNMENT AND DIVERSION—Continued.

Shipments intended for export, but vessel in which space was reserved canceled its sailing. Diversion requested could not be effected on cars which had passed point of interception, whereupon diversion order was canceled and request made that cars be allowed to proceed to destination as originally billed. Rediversion resulted and charges were collected based on combination of locals. Upon contention that charges should have been assessed on basis of lower export rate, *Found*: Governing tariff permitted no diversion under export rate and only one diversion under domestic rate. The combination rate was, therefore, the only rate available. Moreover, there was no showing that diversion rules were unreasonable, or that they were not applied according to their terms. *United Commercial Co. v. S. P. Co.*, 417.

REDUCTION IN RATES. *See also* ADJUSTMENTS AND RELATIONSHIPS.

In General:

Neither voluntary nor compulsory reduction of a rate by a carrier necessarily entitles shippers under unreduced rates to reparation. *Hawkeye Fuel Co. v. S. & E. Ry. & P. Co.*, 157 (159).

Reasonableness of rates charged, and not strict conformity with prescribed method of making percentage reductions in their predecessors, is the controlling consideration. *Anaconda Copper Mining Co.*, 57 I. C. C. 723, and other cited cases. *N. Y. Stable Manure Co. v. Director General*, 349 (351).

By Carriers:

Proposed reduced rates on brick and related articles taking same rates from Mason City, Sheffield, and other adjacent points in Iowa to Twin Cities and Duluth, Omaha, and certain near-by destinations, found not unlawful. Brick and Clay Products between Western Points, 81.

Rates as increased to basis higher than that authorized in the *Fifteen Per Cent case*, 45 I. C. C. 303, and subsequent general advances, and subsequently reduced to basis reflecting proper authorized advances, found not unreasonable. Complainant offered no evidence to indicate that earnings under rates attacked were excessive, but merely urges that rate was unreasonable *per se*. Moreover, the subsequent reduction of a rate is insufficient to establish unreasonableness. *General Chemical Co. v. Director General*, 193.

Rate on crude and fuel oils, in tank cars, from Gainesville, Tex., to Miami, Ariz., found not unreasonable as compared with lower rate subsequently established from south Texas points, which rate was later extended to Gainesville, and other north Texas points. Mere fact that a shipper at some other point may have obtained a reduction in his rate prior to date complainant obtained a like reduction does not prove that rate paid by complainant was unreasonable. *Miami Copper Co. v. A. E. R. R.*, 221.

Domestic rate on imported shelled peanuts from San Francisco to Wilmington, N. C., found not unreasonable as compared with lower import rate subsequently established. Complainant relies exclusively on cases in which reparation was awarded on import shipments to basis of subsequently established rates, but earnings on shipments here involved are substantially lower than on those in cases referred to. Moreover, the subsequent reduction does not in itself warrant a finding that former rate was unreasonable. *Universal Oil Co. v. Director General*, 237.

REDUCTION IN RATES—Continued.

By Carriers—Continued.

Proposed establishment of commodity rate lower than prevailing class basis on insulators from Emeryville, Calif., and other western points to transcontinental Groups F to J, inclusive, found justified. Considering extensive areas of the respective groups, proposed rate is not materially out of line with rates from Macomb, Ill., and other eastern producing points. Eastbound Transcontinental Rates on Insulators, 282.

Subsequent reduction of a rate does not establish unreasonableness of rate previously in effect. *Kaw River Sand & Material Co. v. Director General*, 346 (347).

Applicable class rates assessed on electrical heating and cooking appliances from Marion, Ind., to San Francisco, found not unreasonable, discriminatory, or unduly prejudicial as compared with lower commodity rates subsequently established at complainant's request to assist it in competing with Pacific coast manufacturers. *Rutenber Electric Co. v. C., C. & St. L.*, 541.

Class rates assessed on mussel shells from Marked Tree, Pochahontas, and Clarendon, Ark., to Oswego, Kans., found unreasonable as compared with rates applicable to same commodity from and to numerous points of origin and destination in same general territory which had been established prior to movement of shipments here involved, and to extent they exceeded commodity rates subsequently established, request therefor having been made by complainant approximately 60 days prior to movement of first shipment. Reparation awarded. *Pioneer Pearl Button Co. v. St. L.—S. F.*, 599.

Proposed reduced charges for handling fertilizer, fertilizer materials, cement, and salt at south Atlantic and certain Gulf ports, found justified. Present charges are so high that they have resulted in practices by shippers which obviate the necessity for railroad handling of these commodities and a consequent heavy loss of revenue. Proposed charge is not unreasonably high nor is there warrant for holding that it is unduly prejudicial. Moreover, cost figures submitted by carriers while tending to show that reduced charges will probably not cover all costs if cost is to be ascertained by distributing all burdens over all traffic, indicate that they will produce considerable return in excess of direct out-of-pocket costs of the services. Handling Charges on Cement, Fertilizer, and Salt, 640.

By Commission:

Rates on cucumbers in brine, in bulk in barrels, and in tank cars, from Blytheville, Ark., to Omaha, found unreasonable to extent they exceeded lower rate subsequently established, which lower rate was the same as that applicable from Colorado common points to Missouri River points. Reasonable rate for future prescribed and reparation awarded. *Haarmann Vinegar & Pickle Co. v. C., B. & Q.*, 251.

Third-class rates applicable on soapstone disks, loose, from Schuyler and Tye River, Va., to Toledo, Ohio, and Muncie, Ind., found unreasonable to extent components beyond Esmont, Va., exceeded fifth class. Maximum reasonable rates prescribed for future and reparation awarded. *Toledo Cooker Co. v. N. & A. Ry.*, 271.

REDUCTION IN RATES—Continued.

By Commission—Continued.

Rates on rice bran from Wheatley, Ark., to Jackson and Meridian found unreasonable to extent they exceeded lower rates contemporaneously in effect to New Orleans and other Louisiana points. Reasonable rate for future prescribed and reparation awarded. *Jackson Traffic Bureau v. A. & V.*, 322.

Fact that a rate somewhat lower than rate charged was prescribed by commission for the future does not necessarily show that former rate was unreasonable. Especially is this so where the new rate is part of an extensive readjustment. *News Corp. v. M. P.*, 381 (383).

Rates on broken stone or chatts from Joplin, Webb City, and Oronogo, Mo., to destinations in Crawford County, Kans., over the Missouri Pacific, found unreasonable to extent they exceeded rates prescribed in *Memphis-Southwestern Investigation*, 77 I. C. C. 473, for similar distances involving single-line hauls. Reasonable rates prescribed for the future. *Crawford County Commrs. v. St. L.-S. F.*, 502.

Considering the superior protection against damage which crating affords, also that furniture frames are unfinished material, *Found*: That the l. c. l. rating in official classification on wooden chair and lounge frames, when set up, in boxes or crates, is unreasonable for future to extent it exceeds $2\frac{1}{2}$ times first class. *Parlor Frame Mfrs. Asso. v. A. A. R. R.*, 506.

Following *Handling Charges at Louisiana Ports*, 61 I. C. C. 379, combined wharfage and handling charges on kerosene, in cases, at New Orleans, found unreasonable for future to extent it exceeds 3.5 cents per 100 pounds. *Wharfage Charges at South Atlantic and Gulf Ports*, 609 (613).

REFRIGERATION. *See* PROTECTIVE SERVICE.

REFUSAL TO TRANSPORT.

On account of risk to passenger traffic, the New York Rapid Transit Corp. refused longer to permit petroleum oil, in tank cars, to be transported through its subway in Brooklyn, N. Y. Complainant was notified by the South Brooklyn Ry. that it would not transport such commodity to complainant's plant after June 1, 1924. Upon complaint requesting that commission require carrier to continue such transportation after June 1, *Held*: Upon the record, made in March, 1924, the commission has before it no violation of the act in that regard. *Huber v. C. R. R. Co. of N. J.*, 539 (540).

REFUSED AND UNCLAIMED SHIPMENTS.

Shipment moved to a point at which consignee maintained no office. Carrier mailed notice of arrival on postcard which was not delivered, and later wrote letter to consignor requesting disposition orders. Had defendant complied with tariff requirement which provided that notice of unclaimed freight should be by telegram instead of by letter it would have been received by consignor same day as sent. Defendant's letter, therefore, may not be regarded as a notice prior to date of its receipt. Shipment found overcharged to extent demurrage and penalty charges exceeded those which would have accrued had tariff provision been strictly complied with. Reparation awarded. *Standard Lbr. Co. v. Director General*, 58.

RELATIONSHIP OF RATES. *See* ADJUSTMENTS AND RELATIONSHIPS.

RELATIVE RATES.

Alabama points: Rates on oranges from Grand Bay, Irvington, Bay Minette, Loxley, Silver Hill, and Foley, Ala., to destinations in c. f. a. and western territories, found unreasonable to extent they exceeded lower rates contemporaneously in effect from Mobile and New Orleans to same destinations and subsequently established from Alabama points subsequent to movement. Reparation awarded. *Gulf Coast Citrus Exchange v. L. & N.*, 432.

Atlanta, Inman yards, and Marietta, Ga.: Rates on scrap paper, in machine-pressed bales from, to Chattanooga found not unreasonable. Rates on which complainants rely by way of comparison are below the level of rates on scrap paper in the South, whereas rates instanced by carriers indicate that rates assailed are not out of line with other contemporaneous rates for comparable distances. *Sutphin Co. v. S. Ry.*, 147.

Blytheville, Ark.: Rates on cucumbers in brine, in bulk in barrels, and in tank cars, from, to Omaha, found unreasonable to extent they exceeded lower rate subsequently established which lower rate was the same as that applicable from Colorado common points to Missouri River points. Reasonable rate for future prescribed and reparation awarded. *Haarmann Vinegar & Pickle Co. v. C., B. & Q.*, 251.

Bonita, La.: Rate on rough oak and gum staves and headings from Bonita, a local station on the Missouri Pacific, to Louisville found not unreasonable or otherwise unlawful as compared with lower group rate applicable on lumber, staves, and heading, from various points to Louisville for comparable distances, and later established from Bonita via route of movement, or with rate contemporaneously applicable on yellow-pine and cypress lumber from Missouri Pacific junction points. *Louisville Cooperage Co. v. L. & N.*, 593.

Bowman, Ark.: Combination rates assessed on crushed stone from Cape Girardeau, Mo., to Bowman found unreasonable as compared with lower rates on same and other similar commodities between other points in same general territory for similar and greater distances, as compared with rate prescribed in *Memphis Southwestern Investigation*, 77 I. C. C. 473, on stone for distance similar to that here involved, and to extent they exceeded lower joint rate subsequently established. Reparation awarded. *Edwards Construction Co. v. J., L. C. & E.*, 370.

Brooklyn, N. Y.: Rate on petroleum oil, in tank cars, from Bayonne, N. J., to complainant's plant in Brooklyn, found not unreasonable or otherwise unlawful as compared with lower rate from same point of origin to New York Harbor points and to Boston, and from Philadelphia to Brooklyn and Portland. *Buber v. C. R. R. Co. of N. J.*, 539.

Chattanooga, Tenn.: Sixth-class rate assessed on lumber and fixtures from, to Belhaven, N. C., found unreasonable as compared with lower rate contemporaneously in effect from Nashville, through Chattanooga to Belhaven, with rate from Chattanooga to Newbern, N. C., located in same general seaboard territory as Belhaven; and to extent it exceeded the combination based upon the aggregate of rates to and from Nashville. Reparation awarded. *Walsh & Weidner Boiler Co. v. Director General*, 1.

RELATIVE RATES—Continued.

Delta, Utah:

Applicable rate on petroleum coke from Casper, Wyo., to, found unreasonable to extent it exceeded lower rate to numerous competitive points in Idaho and Utah for distance approximately the same as that to Delta. Transportation conditions affecting movements to Delta were not shown to be less favorable than those encountered between Casper and the competitive points, several of which are located on branch lines farther distant from Casper than Delta. Reparation awarded. *Delta Beet Sugar Corp. v. Director General*, 547.

Rate on coke from Segundo, Colo., to, found unreasonable to extent it exceeded lower rate to numerous competitive points in same general territory for substantially similar distances. No substantial difference was shown between transportation conditions encountered from Segundo to Delta and to the other competitive points to which the lower rates applied. Reparation awarded. *Delta Beet Sugar Corp. v. Director General*, 551.

Dewey, Okla.: Domestic class rate, which included absorption of part of tollage charges at New Orleans, on imported flint pebbles shipped to Dewey, assessed as a result of cancellation of import commodity rate on account of no movement, under general policy of director general with respect to unused rates, found unreasonable as compared with import rate to Kansas City, a farther distant point, which rate included absorption of all tollage charges and was subsequently established to Dewey. Reparation awarded. *Dewey Portland Cement Co. v. A., T. & S. F.*, 311.

Fort Valley, Ga.: Rate on peaches from, to Watuppa, Mass., found not unreasonable, discriminatory, or unduly prejudicial as compared with rate in effect at time of movement from Eufaula, Ala., a farther distant point to which Fort Valley is directly intermediate over route of movement, or with lower rate established after shipment moved. Existence of the fourth-section departure, protected by an appropriate application, is not in itself proof that rate from Fort Valley was unreasonable. The subsequent reduction was part of a voluntary general reduction in rates from Georgia to New England points, made at request of shippers in order to enable them to meet adverse marketing conditions. Under the circumstances it can not be regarded as implying any admission on part of carriers that prior rate was unreasonable. *Gentile Bros. Co. v. C. of G. Ry.*, 328.

Horicon, Wis.: Rate on lumber from Big Fork, Minn., to, found not unreasonable as compared with rates to other points in Wisconsin, Iowa, South Dakota, and Nebraska for similar distances, or as compared with lower rate subsequently established to remove fourth-section departures. *Cotton v. M. & R. R. Ry. Co.*, 275.

International Falls, Minn.:

Rates on wet wood pulp from International Falls to certain destinations in c. f. a. territory found not unreasonable as compared with lower rates established subsequent to movement, with rates from Fox River district, Berlin, N. H., and Three Rivers, Quebec, with rates on newsprint from International Falls, or with rates found reasonable by commission in *United Paperboard Co.*, 62 I. C. C. 59 and various other cases. *Minnesota & Ontario Paper Co. v. Director General*, 105.

Rate on wrapping paper from, to Chicago, found unreasonable to extent that factor up to Duluth exceeded rate prescribed in *Minnesota & Ontario Paper Co.*, 66 I. C. C. 571, from Fox River group to Chicago. Reparation awarded. *Seaman Paper Co. v. Director General*, 139.

RELATIVE RATES—Continued.

Irvine and Beattyville, Ky.: Upon further hearing, rates on crude petroleum, in tank-car loads, from Irvine and Beattyville to Blue Island, Ill., found unreasonable to extent they exceeded rates from mid-continent field. Taking into consideration the greater distance from mid-continent than from eastern Kentucky field, a parity of rates as between the two fields would sufficiently allow for mountainous character of originating territory in eastern Kentucky, for lesser volume of movement, and for lighter weight of oil. Reasonable rates prescribed and reparation awarded. Original report, 59 I. C. C. 689, reversed. *Barnett Oil & Gas Co. v. Director General*, 85.

Jackson and Meridian, Miss.: Rates on rice bran from Wheatley, Ark., to, found unreasonable to extent they exceeded lower rates contemporaneously in effect to New Orleans and other Louisiana points. Reasonable rate for future prescribed and reparation awarded. *Jackson Traffic Bureau v. A. & V.*, 322.

Kansas points: Class rates assessed on mussel shells from Marked Tree, Pocahontas, and Clarendon, Ark., to Oswego, Kans., found unreasonable as compared with rates applicable on same commodity from and to numerous points of origin and destination in same general territory which had been established prior to movement of shipments here involved, and to extent they exceeded commodity rates subsequently established, request therefor having been made by complainant approximately 60 days prior to movement of the first shipment. Reparation awarded. *Pioneer Pear Button Co. v. St. L.-S. F.*, 599.

Knoxville, Tenn.:

Rates on concrete sewer pipe from, to South Carolina points found not unreasonable as compared with rates from Birmingham and Chattanooga. Rates assailed compare favorably with rates from c. f. a. territory to the South generally for similar distances; earnings on sewer pipe are less than on other lower-grade commodities; and a readjustment of rates on sewer pipe is now in progress throughout southern territory. *Shearman Concrete Pipe Co. v. S. Ry.*, 179.

Rates on concrete sewer pipe from, to Oakley, S. C., found unreasonable to extent they exceeded the contemporaneous rate from Chattanooga, which rate was subsequently made applicable from Knoxville. Reparation awarded. *Id.* (179).

Lafayette, Ind.: Rate on bituminous coal from Harrisburg, Ill., to, found not unreasonable as compared with rates to Chicago, Indianapolis, and other points in Illinois and Indiana, or with rates found reasonable by commission in 63 I. C. C. 215, 63 I. C. C. 479, and 64 I. C. C. 555, for similar and greater distances in same general territory. *LaFayette Box Board & Paper Co. v. C., C. & St. L.*, 579.

Loftus, Calif.: Rate assessed on petroleum fuel oil from, to Bisbee, Ariz., found inapplicable. Applicable rate which exceeded the aggregate of intermediates found in contravention of section 4 of the act, and unreasonable to extent it exceeded lower group rate applicable from farther distant points in southern California, which lower rate carriers subsequently extended to Loftus. Reparation awarded. *Gilmore Co. v. P. E. Ry.*, 357.

RELATIVE RATES—Continued.

- Mansfield, Ohio: Rate on strawberries from Castleberry, Ala., to, found unreasonable to extent it exceeded lower rate contemporaneously in effect to Buffalo, Detroit, Cleveland, and Sandusky, farther distant points to which Mansfield is intermediate, such lower rate having been established to Mansfield subsequent to movement here involved. Reparation awarded. *Lee Farms Co. v. L. & N.*, 699.
- Mason City, Iowa: Rates on tractors from Detroit, to, found not unreasonable, discriminatory, unduly prejudicial, or in violation of long-and-short-haul provision of section 4 of the act, as compared with lower rates from Detroit to Minneapolis and St. Paul, more distant points. Lower rate did not apply over route of movement through Mason City and therefore no fourth-section violation existed. Furthermore, lower rates are on basis entirely different from that applying to Mason City; they were established as a result of decisions in 28 I. C. C. 47, 29 I. C. C. 530, and 46 I. C. C. 39; and were found not unreasonable or unduly prejudicial in *North Iowa Traffic Asso.*, 58 I. C. C. 491. *Wagner Motor Co. v. M. C.*, 195.
- Montgomery, Ala.: Considering rates in connection with recognized principle that ton-mile earnings decrease as distance increases, and in further connection with rates to points in southeastern territory for longer distances instanced by carrier, rate on green coffee from New Orleans to Montgomery found not unreasonable as compared with rates from same point of origin to Nashville, Louisville, St. Louis, and other farther distant points. *Fletcher-Wilson Coffee Co. v. L. & N.*, 555.
- Tulsa, Okla.: Rate applicable on gasoline and kerosene, in tank-car loads, from, to Clayton, N. Mex., via Pueblo, found unreasonable as compared with lower rates from other points to Clayton and Cheyenne, Wyo., for comparable distances, and to extent they exceeded lower rates contemporaneously in effect from Tulsa to Clayton via routes other than route of movement. Reparation awarded. *Texas Co. v. A., T. & S. F.*, 691.
- Turner, Kans.: Rates on sand from, to Galloway and Cassidy, Mo., found not unreasonable as compared with lower rates from Kansas City, which lower rates were subsequently applied from Turner. The subsequent reduction of rates assailed does not establish their unreasonableness. *Kaw River Sand & Material Co. v. Director General*, 346.
- Virginia, Minn.: Rates assessed on oranges from points in California to, found inapplicable and applicable rates, based upon combinations of blanket rate to Duluth and the third-class rate beyond, found unreasonable to extent they exceeded transcontinental Group F rates contemporaneously in effect to Duluth. Reparation awarded. *Hansen-Peterson Co. v. A., T. & S. F.*, 596.
- Viroqua, Wis.: Rates charged on sand and gravel from Winona, Minn., to, found not unreasonable, but applicable rates found unreasonable as compared with rates on same commodities from Winona to various other points for similar distances, and with rates produced by distance scales prescribed by State commissions of Iowa, Minnesota, and Wisconsin for intrastate application. Waiver of undercharges authorized. *Campbell Construction Co. v. L. C. & S. E. Ry.*, 99.

RELEASED RATES.

Application for authority under section 20 (11) of the act to establish released rates on marble, granite, and other stone from, to, and within the Southeast, denied. Range of value of rough-quarried sawed, sand-rubbed, and polished granite or marble is not so great that carriers can not estimate with reasonable degree of accuracy what their liability will be in event of loss or damage in transit. It is only where marble or granite has been carved that variation in value becomes extreme, and it is only then that claims for loss or damage are at all substantial, in proportion to freight charges collected. Released rates on carved variety may be proper or even desirable, but record is not sufficient to enable commission to prescribe a reasonable basic value, nor relationship which should exist between released and unreleased rates. Released Rates on Stone in Southeast, 90.

Fact that claims for loss and damage are frequent in the transportation of a given commodity is not in itself a valid reason for establishment of released rates. *Id.* (93).

Fact that an article has a wide range of value, in and of itself, is insufficient to warrant establishment of released rates, because loss and damage claims on that article may be negligible in any event. *Id.* (93).

Where susceptibility of a commodity to loss or damage is comparatively high and wide range in value makes amount of any claim that may arise difficult to estimate, carriers are at a disadvantage unless permitted to base liability and charges on a declaration of value obtained in advance from shipper. In such cases a basic rate should be established conditioned upon declaration by shipper of fair average value of commoner forms of the commodity, together with one or more higher rates to apply when greater value is declared, such higher rates to be no more than reasonably commensurate with additional risk assumed. *Id.* (93).

Where rates based on declared or agreed value have been authorized by commission, the statute accords shippers the right to understate value for purpose of securing the lower rate, and if excess of unreleased over released rates is more than cost of insurance, shippers will ordinarily release carrier and obtain transit insurance elsewhere. But frequently transit insurance can not be obtained, in which event, those shippers who are financially able to do so will assume risk of loss themselves. On the other hand, small shippers are less apt to be able to risk loss of their less frequent shipments, and will thus in greater measure feel compelled to resort to higher unreleased rates for adequate protection. *Id.* (94).

Tariff provided commodity rate on granite blocks, slabs, or pieces, when "rough quarried, * * *" subject to declaration by shipper that actual value was not in excess of a certain amount, and for application of class rate when of greater value. Actual value exceeded limited value specified under commodity rate and class rate was assessed. Limitations as to value in connection with the commodity rate were unlawful and void since they were published without commission's authorization as provided in section 20 (11) of the act. Shipment here involved consisted of rough granite and fell within description of material on which commodity rate applied. Reparation awarded. *Carpenter v. C. V. Ry.*, 309.

REPAIRS.

Upon investigation by commission on its own motion, *Found*: That cost of repairs to locomotives and cars of the Erie R. R. at outside shops during 1920-1923, was greatly in excess of cost of similar work in its own shops, and that a large part of such excess cost was an unreasonable expenditure for maintenance of equipment, and not in the interest of efficient and economical management as required by section 15a of the act. Construction and Repair of Ry. Equipment, 646.

REPARATION. *See* DAMAGES.

RESHIPMENT.

Fifth-class rates assessed on sisal from Indianapolis to certain points in c. f. a. territory, western New York, and Ontario, Canada, found not unreasonable. Shipments here involved represented the reshipment of sisal imported via Gulf ports and held in storage at Indianapolis beyond the transit period. Had they been shipped out from transit point within the transit period they would have been entitled to joint rates from the ports to ultimate destination, plus transit charge. Complainant did not attack the rating or class rates as such but in effect sought extension in some degree of the benefit of the storage-in-transit arrangement to shipments made after expiration of the transit period. Similar proposals however were found not justified in 73 I. C. C. 455 and 78 I. C. C. 575. Sisal Sales Corp. v. B. & O., 297.

RESHIPPING RATES. *See* PROPORTIONAL OR RESHIPPING RATES.

RESTORED RATES.

Director general canceled "per car" rates on livestock and established rates in cents per 100 pounds. After Federal control terminated carriers restored "per car" basis. *Found*: Charges on shipments moving during period when rates in cents per 100 pounds were in effect found not unreasonable. Complainants depended almost entirely upon showing that increases resulted from the change but they furnished no comparisons by which reasonableness may be judged. Even if it be granted that increased rates resulted, this alone would not prove them unreasonable for such increases might have been justified by increased cost of transportation and increased value of livestock during period under consideration. Dickerson v. Director General, 304.

Proposed increased rates on glass bottles from Chattanooga to Memphis, via interstate route, for purpose of restoring previously existing relationship between Chattanooga and St. Louis, found justified. This relationship was disrupted following *Fourth Section Violations in the Southeast*, 32 I. C. C. 61, when rates from St. Louis were increased and no change was made in the rates from Chattanooga, work on a readjustment being interrupted by intervention of Federal control. Glass Bottles from Chattanooga to Memphis, 317.

Proposed increased rates on iron and steel articles, between Newark and points grouped therewith, and New England points, found not justified. Carriers rely entirely upon fact that proposed rates will restore the spread between Newark and Philadelphia groups established following the decision in *Pardee Works*, 39 I. C. C. 162. For over seven years that spread has been treated as one varying with rates and not as a fixed differential. Moreover, there is no evidence that rates from Newark group are subnormal as compared with rates from other groups, and former relationship, if desired by carriers, could be readily restored by reducing rates from Philadelphia group instead of increasing those from Newark group. Iron and Steel between New Jersey and New England Points, 499.

RESTORED RATES—Continued.

Proposed increased rates on coke from points in southwestern Virginia, Benham, Ky., LaFollette and Chattanooga, Tenn., to Cincinnati and certain points in the vicinity thereof, and to Maysville, Ky., designed for purpose of restoring a parity of rates from these coke-producing points, disrupted following general increases authorized in *Increased Rates, 1920*, 58 I. C. C. 220, found not justified. Although record does not indicate that proposed rate to Cincinnati would be unreasonable, it would result in undue prejudice at that point and in undue preference of other Ohio River crossings where a similar situation exists and where a similar increase is not made. Coke to Cincinnati Group, 572.

RESTRICTED RATES, RULES, AND PRACTICES.

Rates on steel grinding balls moving water-and-rail from Chrome, N. J., to Ada, Okla., via Galveston, found not unreasonable or in violation of aggregate-of-intermediates clause of section 4 of the act. Tariffs in effect provided for alternative application of maximum rates, whereby rates to Deming, N. Mex., and Clifton, Ariz., would apply if lower than rate to Ada. The Clifton and Deming rates, however, were restricted to routes other than route of movement, and application of the alternative rule was contingent upon specific reference being made to it in connection with rates to destinations in the tariff, and no such reference was made in connection with rate to Ada. Moreover, rate from point of origin to Deming was higher than rate to Ada. Oklahoma Portland Cement Co. v. A., T. & S. F., 203.

Proposal to restrict basis for computing distance for application of mileage rates on brick and articles taking same rates between points in Oklahoma and Texas and between points in Arkansas and Oklahoma, to distances over routes embracing as a maximum, lines or parts of lines of not more than three carriers, without exception, found not justified. Increases in rates will result to certain destinations in Texas to which the short line distances from Oklahoma are now figured over four or more lines; Texas intrastate rates are figured by use of routes embracing more than three lines; and schedules on other commodities are not similarly limited. Brick between Oklahoma and Texas Points, 210.

Proposal to restrict application of the combination rule so that it will apply only where all issues publishing factors used in arriving at through rates from origin to destination carry reference to the rule and authorize an affirmative application thereof, found not justified. Carriers made no effort to justify increased rates which would result in instances where the rule is published in a separate combination tariff and no reference is made thereto in connection with one factor of a combination, although such reference is made in connection with other factors. While commission has repeatedly sanctioned efforts to eliminate the rule by publication in its stead of joint or proportional rates, it has denied authority to cancel it where unjustified increased rates would result. Combination Rule on Lumber, 279.

RESTRICTED RATES, RULES, AND PRACTICES—Continued.

On further hearing of *Intermediate Routing*, 81 I. C. C. 272, restriction by Great Northern of routing of corn from defined territory in South Dakota over its own lines from Aberdeen, S. Dak., to Montana, Idaho, Washington, and Oregon destinations found not justified. The Great Northern does not originate the traffic and considerations for keeping open routes over the Midland Continental R. R. are shown by present record to be as persuasive as they were in 78 I. C. C. 328, wherein commission declined to sanction a proposal of the Northern Pacific to eliminate that line as an intermediate carrier from Group F points to destinations in Montana on the Great Northern's line. Routing via North Dakota Junctions, 411. Shipments of corn from defined territory in South Dakota to western destinations, principally in the State of Washington, found overcharged. While it was intention of carriers to restrict routing provisions of tariffs carrying lower rates so as to exclude certain intermediate carriers embraced in route of movement, and to restrict routing via their own lines, they did not do so in clear and unequivocal language. Reparation awarded. Id. (411).

If it is carriers' intention to restrict routing provisions of tariffs so as to exclude certain carriers, provision should be made therefor in clear and unequivocal language. See 74 I. C. C. 489, 490; 81 I. C. C. 725, 727. Id. (414).

Proposal of carriers in c. f. a. territory to restrict application of combination rule on livestock so that it will only apply where all factors used in arriving at through rates from origin to ultimate destination carry reference thereto and authorize an affirmative application thereof, found not justified. Such restriction would not merely relieve respondents of assumption of deductions from western lines' separately established rates, but also from their own, since the rule would not apply where any carrier in the through route did not make appropriate reference thereto. This would result in increased charges, the burden of justifying which rests upon respondents. Moreover, from some origin points tariffs of western carriers still refer to the rule, and an inadmissible result of the restriction would be to make rates to be applied by respondent eastern lines depend upon separate tariffs of western lines. This would not accord with requirements of section 6 of the act. Combination Rule on Livestock, 458.

Former report, 81 I. C. C. 745, in which proposed cancellation of the combination rule for constructing combination rates on lumber between southern points and Ohio and Mississippi River crossings, and proposed restriction of routing over Atlantic Coast Line from southern points to Virginia gateways were found not justified, affirmed upon reargument. Carriers made no attempt to justify increased rates which would result; moreover the tariff provision does not fully conform to requirements of section 6 of the act and is objectionable in that restriction proposed makes necessary a search of other tariffs in order to determine whether there are joint rates over any route before it can be determined whether the combination rule is applicable. Cancellation Rule for Combination Rates, 614.

RETURNED EMPTIES.

Rates on empty returned beverage containers from Atlanta to Evansville and Milwaukee, found unreasonable to extent they exceeded rates based upon 66 2/3 per cent of sixth class to Cairo and Evansville and sixth class beyond, minimum 20,000 pounds. Reparation awarded. Bradley & Woertz v. N., C. & St. L., 512.

RETURNED EMPTIES—Continued.

With respect to the cereal-beverage trade it is self-evident that return of empty bottles is contemplated by both consignor and consignee, and for that reason and on account of nonadaptability of these containers to other uses the practice of according rates lower than those on new containers should not be discouraged. *Id.* (515).

The return of empty beverage containers to manufacturer for refilling benefits carrier because it encourages use of substantial containers and furnishes additional revenue for empty-return movement, benefits manufacturer because it permits repeated use of same container, and benefits public because it makes for a lower cost of the product. *Id.* (515).

Measure of rates on returned empty cereal-beverage containers lower than on new containers can not be made the subject of any hard and fast rule, but must depend, as do all rates, upon facts and circumstances of record, taking into consideration low value of the commodity, volume of movement, and other material elements. *Id.* (515).

Rates on empty returned beer packages, c. l. and l. c. l. from eastern points to La Crosse, Wis., found unreasonable to extent they exceeded the aggregate of intermediates to and from Chicago. Joint rates which exceed the aggregate of intermediates are *prima facie* unreasonable and evidence in instant case affords an unsatisfactory rebuttal of that presumption. Reparation awarded. *La Crosse Chamber of Commerce v. Director General*, 602.

Fourth-class rates on empty returned cement bags and sacks from Texas points to Ada, Okla., found unreasonable and unduly prejudicial as compared with rates of one-half of fourth class contemporaneously in effect on same commodities wholly within Texas and other States; also with similar lower rates on both State and interstate movements of various other empty returned containers in same general territory. Measure of reasonable rates prescribed. *Oklahoma Portland Cement Co. v. A. & S.*, 605.

Proposed increased rating on acid carboys, returned empty, from and to points in western trunk-line territory, found justified. Acid carboys are not desirable freight and can not be handled as expeditiously or cheaply as other empty returned containers which can be tiered. There is considerable danger involved in their handling, and many restrictions not operative with respect to mineral-water and other empty returned containers increase cost of their transportation. Moreover, rating proposed is the same as that now applicable from intermediate points and will have effect of removing fourth-section departures, is the same as that generally applicable in western trunk-line territory east of Missouri River, does not appear unreasonable, and it is not shown that it will result in undue prejudice or preference. *Carboys, Returned Empty, in Western Territory*, 672.

RETURN ON INVESTMENT. See also DEFICIT.

Under the law as it now stands carriers are under no obligation to make their terminal charges with a view to insuring a profit upon operations of other public terminals. Nor does it seem to the commission to have been contemplated that expressed policy of Congress of developing public terminals at port cities is to be carried out by imposing unnecessary expense upon shippers and traffic, which would defeat a policy of real terminal improvement. *Handling Charges on Cement, Fertilizer, and Salt*, 640 (644).

RIVER CROSSINGS. *See* CONSTRUCTIVE MILEAGE.

ROUTES AND ROUTING. *See also* CIRCUITOUS ROUTES; MISROUTING.

Shipment of sorghum seed from Kansas City to Montgomery, specifically routed by shipper "C. of G. at Birmingham, Ala.," and shipment so moved. Combination rate based on Memphis assessed. Had shipment moved to Birmingham, thence over Southern Ry. to Mobile, and back through Birmingham to destination a lower combination would have applied. *Held*; Notwithstanding that route through Mobile was not designated by shipper, it was duty of carrier under rule 5(b) of Tariff Circular 18-A to apply the Mobile rate, which was applicable to and from Birmingham, the interchange point directly intermediate to the base point upon which lowest combination made. Shipment found overcharged and reparation awarded. *Schloss & Kahn Grocery Co. v. St. L.-S. F.*, 67.

Rates on bituminous coal over interstate routes from mines in the Linton and Clinton groups in Indiana to Marion, Kokomo, Elwood, Michigantown, and Warren, Ind., found not unreasonable as compared with lower rates over intrastate routes, which rates were subsequently increased to basis of the interstate rates, or as compared with rates from Illinois mines to Indiana destinations. *Wright & Wimmer v. C., T. H. & S. E.*, 183.

A lower rate over a route other than route of movement does not constitute a violation of the long-and-short-haul provision of section 4 of the act. *Wagner Motor Co. v. M. C. R. R.*, 195 (196).

On further hearing of *Intermediate Routing*, 81 I. C. C. 272, restriction by Great Northern of routing of corn from defined territory in South Dakota over its own lines from Aberdeen, S. Dak., to Montana, Idaho, Washington, and Oregon destinations found not justified. The Great Northern does not originate the traffic and considerations for keeping open routes over the Midland Continental R. R. are shown by present record to be as persuasive as they were in 78 I. C. C. 328, wherein the commission declined to sanction a proposal of the Northern Pacific to eliminate that line as an intermediate carrier from Group F points to destinations in Montana on the Great Northern's line. Routing via North Dakota Junctions, 411.

Shipments of corn from defined territory in South Dakota to western destinations, principally in State of Washington, found overcharged. While it was intention of carriers to restrict routing provisions of tariffs carrying lower rates so as to exclude certain intermediate carriers embraced in route of movement, and to restrict routing via their own lines, they did not do so in clear and unequivocal language. Reparation awarded. *Id.* (411).

If it is intention of carriers to restrict routing provisions of tariffs so as to exclude certain carriers, provision should be made therefor in clear and unequivocal language. *See* 74 I. C. C. 489, 490; 81 I. C. C. 725, 727. *Id.* (414).

Rate applicable on gasoline and kerosene, in tank-car loads, from Tulsa, Okla., to Clayton, N. Mex., via Pueblo, found unreasonable to extent it exceeded lower rates contemporaneously in effect via routes other than route of movement. Reparation awarded. *Texas Co. v. A., T. & S. F.*, 691.

RULES, REGULATIONS, AND PRACTICES.

Rules, regulations, and practices of C. R. R. Co. of N. J., under which it refuses to float shipments of cast-iron soil pipe from Jersey City to its North River piers, Manhattan Island, N. Y., and requiring shippers to take delivery at former point, found unreasonable. Iron pipe, due chiefly to amount of time required to unload, may be undesirable traffic at pier stations, but defendant does not similarly restrict other substantially similar commodities which are bulky and difficult to handle, and nothing of record indicates that latter should be accorded more favorable rules respecting delivery than cast-iron soil pipe. *Somerville Iron Works v. C. R. R. Co. of N. J.*, 39.

Congestion existing at piers on Manhattan Island has been referred to by commission in various cases, and reasonable rules and regulations designed for its relief and to facilitate handling increasing tonnage of merchandise freight at the piers will not be condemned. *Id.* (42).

No track scales were located at either loading or unloading point, and no tariff provision was made for ascertaining weights of gravel shipped in unweighed cars. Charges assessed on shipments not weighed or measured, based upon an unfiled circular issued by carrier to station agents and conductors, which provided for use of certain estimated weights on this commodity when shipped under above conditions, found legally applicable. Practice of carriers in issuing circulars respecting use of estimated weights on unweighed shipments was considered by commission in *Weighing of Freight by Carriers*, 28 I. C. C. 7, and not condemned. Moreover, unless these rules are incorporated in tariffs they are not usually filed with regulatory bodies. *Becker County v. Director General*, 368.

SCALE OF RATES. *See* DISTANCE RATES.

SECONDHAND ARTICLES. *See* NEW AND SECONDHAND ARTICLES.

SECTION 1.

Upon contention that under section 1 (12) of the act the commission has no jurisdiction over distribution of cars to carrier-owned or output-contract mines which furnish railway fuel exclusively for at least six months, because such mines are not "served" by a carrier. *Held*: Word "served" has no judicially determined or technical meaning which would make it inapplicable to such mines. The commission believes that Congress intended to use the word in its ordinary and well-accepted meaning, i. e., to mean the furnishing of cars by a carrier at its own mines or at those the output of which it takes. As used in paragraph (12) "served" is a convenient term to show that provisions of this paragraph apply not only to mines located on a carrier's own line, regardless of ownership or contractual arrangements, but also to those mines located off its line and which it customarily supplies with cars. *Assigned Cars for Bituminous Coal Mines*, 701 (714-715).

The word "transportation" as used in section 1 (12) of the act is not limited in its meaning to transportation for compensation, but includes also transportation of carrier's own coal over its line. *Id.* (715).

Section 1 (12) of the act held to apply to cars placed at carrier-owned and output-contract mines, and can not be relied upon to show that Congress exempted such cars from other provisions of section 1 requiring reasonable rules of distribution, and provisions of section 3 prohibiting unduly preferential or prejudicial rules. *Id.* (716).

SECTION 1—Continued.

Contention that section 1 (12) of the act, which was incorporated by the transportation act, 1920, limits the commission's power to change or extend by further limitation the rule of car distribution laid down in the *Traer case*, 13 I. C. C. 431, and *Hocking Valley case*, 12 I. C. C. 398, not sustained. That this was not intent of Congress is clear. In *United States v. P. R. R. Co.*, 69 L. Ed. 76, the court said that there was nothing in the interstate commerce act as originally enacted, or in the transportation act, or in any earlier amendment, which indicates a purpose on part of Congress either to allow a carrier to create undue prejudice by use of facilities possessed, or to narrow the commission's powers to prevent unjust discrimination. *Id.* (730).

SECTION 2. *See* DISCRIMINATION.SECTION 3. *See* DISCRIMINATION; PREFERENCES AND PREJUDICES.SECTION 4. *See* LONG AND SHORT HAUL; THROUGH AND LOCAL.SECTION 6. *See also* LEGAL RATES; OVERCHARGES.

The commission has power under section 6 (13-b) of the act to establish through routes between rail and water carriers and prescribe maximum rail-and-water and rail-water-and-rail rates over rail and water lines even though water line is not used under a common control, management, or arrangement for continuous carriage or shipment. *Houston Cotton Exchange v. A. & A. R. R. Corp.*, 268.

Contention that section 15 (3) and section 6 (13), (13a), and (13b) of the act are qualified by section 1 (1a) so that they relate to transportation partly by rail and partly by water only when both are used under a common control, management, or arrangement for a continuous carriage or shipment, not sustained. This would lead to absurd conclusion that commission is enabled to establish a physical connection at a dock between a rail and water carrier only where the water carrier already has an arrangement for continuous service with the rail line. *Id.* (270).

The commission has no desire to continue indefinitely operation of the so-called combination rule, but on contrary feels that carriers should use all due diligence in eliminating that rule from their tariffs, as it is not a desirable method of publication or one which fully meets requirements of section 6. Cancellation Rule for Combination Rates, 614 (615).

SECTION 15.

Contention that section 15 (3) and section 6 (13), (13a), and (13b) of the act are qualified by section 1 (1a) so that they relate to transportation partly by rail and partly by water only when both are used under a common control, management, or arrangement for a continuous carriage or shipment, not sustained. This would lead to absurd conclusion that commission is enabled to establish a physical connection at a dock between a rail and water carrier only where water carrier already has an arrangement for continuous service with the rail line. *Houston Cotton Exchange v. A. & A. R. R. Corp.*, 268 (270).

SECTION 20. *See* RELEASED RATES.

SEPARATE PUBLICATION OF CHARGES.

Ordinarily the service of making up and breaking up trains is an operating incident compensation for which is included in the transportation rate. Where, however, such service is rendered in some instances and not in others, and in still others is only service performed by a common carrier, the charge for that service should be separately stated. *Peoria & Pekin Union*, 3 (22).

SHORTAGE OF CARS. *See* CAR SHORTAGE.

SHORT HAULING.

Defendants' refusal to establish joint rates on grain and products from the West and South via Bangor, Pa., over certain through routes via which originating carrier would be short-hauled, or where an additional carrier would be injected without compensatory advantage of the shortened haul, found not unreasonable. *Flory Milling Co. v. C. N. E. Ry.*, 129.

Upon contention that establishment of through routes and joint rates sought would in several instances short-haul carriers participating in existing routes, in violation of section 15 (4) of the act, and in others divert traffic from existing routes without justification and thereby deprive carriers of traffic long enjoyed, *Held*: First objection has no application unless carrier originates the traffic or receives it from a connection, in which event it should be allowed to transport it as far as it can before delivering it to a connecting line. Relative to second objection, it is equally true that a carrier under usual conditions has no existing right to traffic still in possession of connecting lines. *Id.* (134).

SHORT LINE POINTS. *See* BRANCH AND SHORT LINE POINTS.

SHORT LINES. *See* COMMON CARRIERS; TAP LINES.

SIGNATURE.

Formal complaint filed by same company filing informal proceeding bore signatures of complainant's attorney and of general traffic manager of another company which bought complainant's entire stock. Upon contention that formal complaint is barred because filed by successor company, and does not represent a formal complaint filed by same company named in informal proceeding, *Held*: While formal complaint carries signature of general traffic manager of successor company without showing agency, it is also signed by complainant's attorney, and as presented is properly signed and not barred. *Forrester-Nace Box Co. v. Director General*, 665.

SPECIAL EQUIPMENT. *See* EQUIPMENT.

SPORADIC MOVEMENT. *See also* EMERGENCY RATES.

While fact that shipment was isolated is to be considered, it is not controlling in determining the reasonableness of a rate; such issue must be decided upon its merits. *Armacost & Co.*, 88 I. C. C. 187; *Meigs Pulpwood Co.*, 78 I. C. C. 473. *Chattanooga Bottle & Glass Mfg. Co. v. S. Ry.*, 71 (72).

Rate on tanbark from Ross Spur (Wild Cat Spur), Wis., to Sheboygan, Wis., during Federal control, found not unreasonable as compared with lower rates contemporaneously applicable from Star Lake group points in same general vicinity. Shipments were sporadic, request for a through rate was not made until movement had ceased, and traffic moved during period when operating conditions on the branch were rendered difficult by heavy snowfall. Moreover, rate assailed compares favorably with those found reasonable on similar traffic in 58 I. C. C. 217 and 87 I. C. C. 322. *American Hide & Leather Co. v. Director General*, 265.

Combination fifth-class rates based on Ohio River crossings assessed on sporadic shipments of canned meats (surplus army stock) moving from Atlanta to Chicago, found not unreasonable as compared with lower commodity rates on other canned goods, or with rate on the complete canned-goods list, including meats, vegetables, fruits, etc., southbound from Ohio River crossings to Atlanta. Probability of any traffic northbound other than sporadic shipments is remote, and a northbound commodity rate south of Ohio on these shipments as low as that applicable in reverse direction, under which traffic moves regularly, does not seem justified. *Armour & Co. v. L. & N.*, 360.

SPORADIC MOVEMENTS—Continued.

Upon contention that class rates are properly applicable on isolated shipments in lieu of commodity rates, as latter are established to take care of sustained movements, *Held*: Shippers are entitled to reasonable rates, and fact that there have been relatively few shipments of a commodity between certain points is not sole determinative factor. *Parkersburg Rig & Reel Co. v. M. P.*, 667 (669).

SPOTTING CARS.

Nonabsorption of switching charges of Pittsburgh, Allegheny & McKees Rocks R. R., on traffic to and from points of unloading and loading at complainant's plants at McKees Rocks and Allegheny, Pa., during Federal control, found not to have resulted in unreasonable charges because in excess of the Pittsburgh district rates. While a number of large industries in that district performed their own spotting service, and some received allowances from trunk lines and others did not, record does not show that industries generally therein, without regard to size or complexity of plant tracks, received benefit of the flat Pittsburgh rates on all commodities regardless of origin or destination. *Pressed Steel Car Co. v. Director General*, 224.

Whether line-haul rates include terminal services to points of loading and unloading in large industrial plants is a question which must be determined upon facts and circumstances of each particular case. The question is so closely related to the industrial railway problem that it has seldom been considered apart from question of whether an industrial railway serving a particular industry was or was not a common carrier. *Id.* (229).

Contention that admissions on part of carriers, by their offer to perform spotting service, their subsequent absorption of charges for that service, and payment of reparation, and admission on part of director general, by offer of settlement, establishes fact that line-haul rates included spotting service at points of loading and unloading, or at point of final placement within plants, *Held*: These admissions, although entitled to consideration, are not conclusive. Director general is not chargeable with concessions which may have been made by corporations which succeeded him. His offer was in nature of a compromise, and in accordance with familiar rules of law is not to be held against him. *Id.* (232).

SPREAD OF RATES. *See also* DIFFERENTIALS.

Proposed increased rates on iron and steel articles between Newark, and points grouped therewith, and New England points, found not justified. Carriers rely entirely upon fact that proposed rates will restore the spread between Newark and Philadelphia groups established following the decision in *Pardee Works*, 39 I. C. C. 162. For over seven years that spread has been treated as one varying with rates and not as a fixed differential. Moreover, there is no evidence that rates from Newark group are subnormal as compared with rates from other groups, and former relationship, if desired by carriers, could be readily restored by reducing rates from Philadelphia group instead of increasing those from Newark group. *Iron and Steel between New Jersey and New England Points*, 499.

STATE AND INTERSTATE.

Minimum weights on alfalfa hay from points in New Mexico to points in Texas, higher than from competing points in Texas to same destinations found unreasonable and unduly prejudicial to shippers in New Mexico, unduly preferential of shippers in Texas, and unjustly discriminatory against interstate commerce. Maximum minimum weights suggested. *New Mexico Corp. Commission v. A., T. & S. F.*, 43.

STATE AND INTERSTATE—Continued.

Commission has same authority and duty with respect to removal of unjust discrimination brought about by different c. l. minima as it has in case of unjust discrimination against interstate traffic caused by state rates. *Kansas City Millers' Club*, 50 I. C. C. 170, 182. Id. (47).

Failure of line-haul carriers to absorb switching charges of Minneapolis Eastern and Minneapolis Western railroads at Minneapolis, on grain moving from South Dakota, found not unreasonable. Complainants urge no circumstances justifying charges on interstate shipments while similar charges on intrastate shipments were absorbed, referring to absorption practices of line-haul carriers at other points. However, circumstances and conditions at other points are not shown similar to those at Minneapolis, nor does record establish that switching charge assailed was unreasonable *per se* or that collection thereof in addition to line-haul rate resulted in unreasonable charges for entire transportation service furnished. *Shanard Elevator Co. v. M. E. Ry.*, 151.

Rates on bituminous coal over interstate routes from mines in the Linton and Clinton groups in Indiana to Marion, Kokomo, Elwood, Michigantown, and Warren, Ind., found not unreasonable as compared with lower rates over intrastate routes, which rates were subsequently increased to basis of the interstate rates, or as compared with rates from Illinois mines to Indiana destinations. *Wright & Winmer v. C., T. H. & S. E.*, 183.

Fourth-class rates on empty returned cement bags and sacks from Texas points to Ada, Okla., found unreasonable and unduly prejudicial as compared with rates of one-half of fourth class contemporaneously in effect on same commodities wholly within Texas and other States; also with similar lower rates on both state and interstate movements of various other empty returned containers in same general territory. Measure of reasonable rates prescribed. *Oklahoma Portland Cement Co. v. A. & S.*, 605.

STATE RATES. *See also* STATE AND INTERSTATE.

Rates on coal from Mount Olive and Staunton, Ill., to West Pullman, Ill., during Federal control, increased in error by director general and subsequently restored to former level, found not unreasonable as compared with rates from other mines not subjected to the increase. Rates from Illinois mines are admittedly low and did not become unreasonable merely because other low rates to same destination were not correspondingly increased; nor was increase applied through error sufficient in itself to show that resulting rate was unreasonable. *Consolidated Coal Co. v. Director General*, 53.

As an outgrowth of receivership proceedings the United States District Court ordered increases in intrastate switching charges of the Evansville & Indianapolis R. R. Tariffs were forwarded to State commission which "neither accepted nor rejected them" on ground that they failed to comply with State statutes as to notice, but such tariffs were retained in the State commission's files "for information only." *Held*: Such increased charges assessed on intrastate shipments during Federal control found not illegal, and it is not within this commission's province to pass upon question of whether the district court erred. *American Hominy Co. v. Director General*, 256.

STATE RATES—Continued.

Rate on tanbark from Ross Spur (Wild Cat Spur), Wis., to Sheboygan, Wis., during Federal control, found not unreasonable as compared with lower rates contemporaneously applicable from Star Lake group points in same general vicinity. Shipments were sporadic, request for a through rate was not made until movement had ceased, and traffic moved during period when operating conditions on the branch were rendered difficult by heavy snowfall. Moreover, rate assailed compares favorably with those found reasonable on similar traffic in 58 I. C. C. 217 and 87 I. C. C. 322. *American Hide & Leather Co. v. Director General*, 265.

Rate on empty wooden boxes from Kansas City to Carl Junction, Mo., during Federal control found not unreasonable because in excess of the rate to Carthage, Mo., to which Carl Junction is intermediate. Complainant submitted no evidence bearing upon unreasonableness of rate assailed but takes position that because rate to intermediate point is higher than to more distant point, the higher rate is therefore unreasonable under section 1 of the act, but this does not follow. Defendants show that rate assailed compares favorably with rates on similar and other empty containers for similar hauls from Kansas City. *Forrester-Nace Box Co., v. Director General*, 665.

STATUTE OF LIMITATIONS. *See* LIMITATION OF ACTION.

STATUTORY NOTICE.

Where special permission is granted carriers to establish rates upon less than statutory notice, such permission has no effect upon rates until they have been published and filed in accordance with requirements of the act. *Oklahoma Portland Cement Co. v. A., T. & S. F.*, 203 (204).

STORAGE.

Export shipments originally moved on domestic bills of lading, sailing date and space on steamer having been previously reserved. Domestic bills were exchanged for export bills, the latter bearing notation "order notify" consignees at foreign ports. Due to refusal of shipments by vessel on which space reserved they were stored and subsequently exported on other vessels. *Held*: Following *U. S. Steel Products Co.*, 88 I. C. C. 57, demurrage and storage charges assessed, but not paid, found illegal. Applicable tariff provided in such cases for the giving of advance notice to notify party at port of exit that carrier is ready to make delivery, but there were no parties at the port to be notified and no demurrage or storage could therefore accrue. *American Steel Export Co. v. Director General*, 235.

Storage and demurrage charges on lumber held in excess of free time on lighterage equipment at complainant's yard in New York Harbor found not unreasonable or otherwise unlawful. Complainant was unable to furnish berths for boats upon which demurrage accrued, could not receive all shipments consigned to it, did not stop those which were being made, and admittedly was unable to accept delivery. If demurrage was computed on car-demurrage basis it would greatly exceed that actually assessed on lighterage basis, and it is not shown that complainant or its traffic is treated any differently from any other dealer in lumber receiving lighterage-free delivery at private piers in New York Harbor. *Coastwise Lumber & Supply Co. v. P. R. R.*, 288.

Storage and demurrage charges are not assessed primarily for revenue purposes nor based upon a fair rental value of equipment, but are rather in nature of penalties to prevent wasteful and extravagant use of equipment. *Coastwise Lumber & Supply Co. v. P. R. R.*, 288 (289).

STORAGE—Continued.

Storage of coal by railroads and others in periods of car surplus tends to equalize demands by operators on railway equipment throughout the year, and to prevent periods of extreme car shortage during which, because of the great demand for coal, inefficient high-cost mines spring into operation, and the public is required to pay excessive prices for coal. Assigned Cars for Bituminous Coal Mines, 701 (724).

STORAGE IN TRANSIT. *See* TRANSIT ARRANGEMENTS.

STRINGPIECE DELIVERY. *See* DELIVERY.

SUBNORMAL RATES. *See* LOW AND DEPRESSED RATES.

SUBSEQUENTLY ESTABLISHED RATES *See* REDUCTION IN RATES (By CARRIERS).

SUCCESSOR IN INTEREST.

Prior to filing of complaint, assets and liabilities of complainant were assumed by a successor company whose interest was not disclosed until after statute of limitations had run. Upon contention that motion to join successor in interest as co-complainant comes too late, and that lack of interest precludes a recovery of reparation by complainant, *Held*: Following *Plymouth Coal Co.*, 56 I. C. C. 699, if complainant is party injured by a violation of the act the award of reparation should be made in its favor, and it may not be denied reparation because of an assignment *pendente lite* under which no adverse rights are asserted. Fact that assignment took place prior to filing of complaint warrants no different conclusion. *See* 68 I. C. C. 138; 83 I. C. C. 557. *Delta Beet Sugar Corp. v. Director General*, 547 (549-550); *Same v. Same*, 551 (553-554).

Formal complaint filed by same company filing informal proceeding bore signatures of complainant's attorney and of general traffic manager of another company which bought complainant's entire stock. Upon contention that formal complaint is barred because filed by successor company, and does not represent a formal complaint filed by same company named in informal proceeding, *Held*: While formal complaint carries signature of general traffic manager of successor company without showing agency, it is also signed by complainant's attorney, and as presented is properly signed and not barred. *Forrester-Nace Box Co. v. Director General*, 665.

SWITCH CONNECTION.

Prayer for an order requiring construction and operation of an interchange track between intersecting lines of A., T. & S. F. and C., R. I. & P. railways at Courtland, Kans., in order to reduce the mileage and therefore the rate, from Superior to Rock Island points, but more particularly to expedite delivery, complainant alleging loss of business to rival plants which can make more expeditious delivery than it can, denied. No definite evidence was introduced as to probable difference in time over route sought and over present route; nor with respect to time consumed in shipments from competing points. Moreover, record fails to establish that there would be sufficient traffic over the connection to justify its construction and maintenance. *Nebraska Cement Co. v. A., T. & S. F.*, 163.

SWITCHING.

Practice of the Peoria & Pekin Union Ry., in assessing charges at and in vicinity of Peoria, Ill., for interchange service between connections with its tenants and the rails of Minneapolis & St. Louis, and St. Louis, Springfield & Peoria, an electric line, while contemporaneously performing a like service between connections with its tenants and rails of C., B. & Q., and Rock Island without charge, found unjustly discriminatory and unduly prejudicial. *Peoria & Pekin Union*, 3 (23).

SWITCHING—Continued.

Following *Clay Grain Co.*, 78 I. C. C. 539, aggregate of line-haul rates and charges for switching from connections with road-haul carriers to export elevators at Galveston, on export grain from points in Missouri, Iowa, Minnesota, Nebraska, Kansas, Colorado and Oklahoma found unreasonable to extent they exceeded such line-haul rates exclusive of switching charges. Reparation awarded. *Armour Grain Co. v. A., T. & S. F.*, 124.

Failure of line-haul carriers to absorb switching charges of Minneapolis Eastern and Minneapolis Western railroads at Minneapolis, on grain moving from South Dakota, found not unreasonable. Complainants urge no circumstances justifying charges on interstate shipments while similar charges on intrastate shipments were absorbed, referring to absorption practices of line-haul carriers at other points. However, circumstances and conditions at other points are not shown similar to those at Minneapolis, nor does record establish that switching charges assailed were unreasonable *per se* or that collection thereof in addition to line-haul rate resulted in unreasonable charges for entire transportation service furnished. *Shanard Elevator Co. v. M. E. Ry.*, 151.

Complaint alleging that switching charges collected in addition to line-haul rates, assessed under tariff items properly filed with commission, found not to present an overcharge claim within meaning of section 6 of the act. See *Flushing Farmers' Elevator Co.*, 87 I. C. C. 9, 10. *Id.* (153).

There is no general reciprocal absorption of switching charges in the Pittsburgh district such as prevails in other metropolitan districts. *Pressed Steel Car Co. v. Director General*, 224 (232).

As an outgrowth of receivership proceedings the United States District Court ordered increases in intrastate switching charges of the Evansville & Indianapolis R. R. Tariffs were forwarded to State commission which "neither accepted nor rejected them" on ground that they failed to comply with State statutes as to notice, but such tariffs were retained in State commission's files "for information only." *Held*: Such increased charges assessed on intrastate shipments during Federal control found not illegal and it is not within this commission's province to pass upon question of whether district court erred. *American Hominy Co. v. Director General*, 256.

SWITCHING DISTRICTS.

There is no general reciprocal absorption of switching charges in the Pittsburgh district such as prevails in other metropolitan districts. *Pressed Steel Car Co. v. Director General*, 224 (232).

TAP LINES.

Divisions and allowances accorded *Christie & Eastern Ry.*, a common-carrier tap line, by trunk-line connections, out of joint rates on lumber and forest products, found not unjust, unreasonable, inequitable, or otherwise unlawful. The *Christie* originally connected with but a single trunk line at Sandel but by extending its service under trackage rights additional outlets were established at Lecompte and Long Leaf. *Held*: Hauling traffic through Long Leaf or Lecompte, instead of to less distant connection at Sandel, is an unnecessary and uneconomic service and not in the public interest. Service, as extended, falls under the ban of inefficiency since it entails a burden of expense voluntarily assumed which can not be overcome by increased volume of traffic. Moreover, such unnecessary expense should not be offset by depleting revenues of trunk-line connections, *Christie & Eastern Ry. v. K. C. S.*, 675.

TAP LINES—Continued.

Divisions between carriers not operated under similar circumstances and conditions are not a proper measure of divisions to tap lines. *Id.* (677).

TARIFF CIRCULAR.

Rates on steel plates from Claymont, Del., to certain points in Pennsylvania found unreasonable to extent they exceeded lower rates contemporaneously in effect from Chester, Pa., a farther distant point. Such lower rate was published subject to rule 77 of Tariff Circular 18-A, and was established from Claymont subsequent to movement of shipments. Reparation awarded and original report, 87 I. C. C. 29, reversed. *Worth Steel Co. v. Director General*, 37.

Lumber from Demopolis, Ala., to Louisville, reconsigned to Bluefield, W. Va., moved under combination rates. Over another practicable route beyond Louisville a lower combination applied to Roanoke, Va., and under rule 5(b) of Tariff Circular 18-A such lower rate was available to Bluefield. *Held*: Shipment misrouted in that it was not forwarded from Louisville over lower rated route. Reparation awarded. *Standard Lbr. Co. v. Director General*, 58.

Shipment of sorghum seed from Kansas City to Montgomery, specifically routed by shipper "C. of G. at Birmingham, Ala.," and shipment so moved. Combination rate based on Memphis assessed. Had shipment moved to Birmingham, thence over Southern Ry. to Mobile, and back through Birmingham to destination a lower combination would have applied. *Held*: Notwithstanding that route through Mobile was not designated by shipper, it was duty of carrier under rule 5(b) of Tariff Circular 18-A to apply the Mobile rate, which was applicable to and from Birmingham, the interchange point directly intermediate to the base point upon which lowest combination made. Shipment found overcharged and reparation awarded. *Schloss & Kahn Grocery Co. v. St. L.-S. F.*, 67.

Rate on scrap brass from Binghamton, N. Y., to Philadelphia, found unreasonable to extent it exceeded lower rate from Black Rock, Buffalo, and East Buffalo, N. Y., farther distant points. Publication subject to rule 77 of Tariff Circular 18-A of lower rate from farther distant points was in violation of long-and-short-haul clause of the fourth section and was tantamount to an admission by defendant that higher rate from Binghamton was unreasonable. *Standard-Asphalt & Refining Co.*, 66 I. C. C. 611, and cases there cited. Reparation awarded. *Levene's Sons v. D., L. & W.*, 344.

Complainant contended that class rate assessed under analogous article rule of the classification was inapplicable, and that under terms of that rule lower commodity rate should have been charged. *Held*: Language of analogous article rule definitely restricts its application to *classification* of commodities, and can not be used to determine application of commodity rates carried in commodity tariffs. Moreover, rule 6(b) of Tariff Circular 18-A provides that "commodity rates must be specific and must not be applied to analogous articles." *Cullum & Boren Co. v. C., B. & Q.*, 354 (355).

TARIFF INTERPRETATION.

Class rate on l. c. l. shipment of iron pipe fittings from Barborton, Ohio, to Duluth, destined to Virginia, Minn., found inapplicable to extent it exceeded lower commodity rate published in same tariff on "iron and steel articles, c. l.," which lower rate by tariff note applied on a list of commodities in which pipe fittings were included without limitation as to whether c. l. or l. c. l. While carriers intended to omit all reference to l. c. l. rates in connection with the lower commodity rate, through oversight this was not done. However, erroneous publication of rates does not justify a departure therefrom and intention of framers is not controlling. Reparation awarded. *Murray-Egan-McLeod Co. v. P. R. R.*, 79.

Statements on title-pages of tariffs which are general in nature should not be given narrow constructions as to defeat specific provisions contained in bodies of the issues. *Armour Fertilizer Works v. S. Ry.*, 186 (187).

Direct reference in rate tariffs to the combination rule in a combination tariff in effect makes such rule a part of the former just as definitely as though it were published therein, and principle announced in the *Sligo case*, 62 I. C. C. 643; 73 I. C. C. 551, is controlling. Combination Rule on Lumber, 279 (280).

At time of movement there was no specific rate or rating on "earthenware jugs, insulated and metal jacketed," and under analogous article rule rate applicable on "jugs, glass, insulated and metal jacketed," was assessed. Contemporaneously lower rates applied on "pottery, earthenware, stoneware, common brown or gray jugware." *Found*: An earthenware jug, when insulated and metal jacketed, completely loses its identity as an ordinary earthenware jug or jar and value of insulated metal-jacketed articles greatly exceeds that of ordinary earthenware jugs. Article under consideration does not fall within generic term "pottery, earthenware, stoneware, common brown or gray jugware," and rate charged was applicable. *Cullum & Boren Co. v. C., B. & Q.*, 354.

Complainant contended that class rate assessed under analogous article rule of the classification was inapplicable, and that under terms of that rule lower commodity rate should have been charged. *Held*: Language of analogous article rule definitely restricts its application to the *classification* of commodities, and can not be used to determine application of commodity rates carried in commodity tariffs. Moreover, rule 6(b) of Tariff Circular 18-A provides that "commodity rates must be specific and must not be applied to analogous articles." *Id.* (355).

Bicycles were classified under heading of "hand vehicles" upon which first-class rates applied. Contemporaneously a lower commodity rate was maintained on "light and heavy non-self-propelling freight and passenger vehicles." *Held*: Since a bicycle is neither a freight nor a passenger vehicle, first-class rates assessed were applicable. *United Cycle & Supply Co. v. B. & O.*, 689; *Jones v. P. R. R.*, 697.

Tariffs are construed according to their language, and intention of framers is not controlling. *Boldt Co.*, 42 I. C. C. 308, 310; *Southern Veneer Assn.*, 62 I. C. C. 669, 674. *United Cycle & Supply Co. v. B. & O.*, 689 (690).

TAXES. See WAR TAXES.

93 I. C. C.

TEMPORARY RATES.

Rate on wheat from points in Nebraska to Great Falls, Mont., during Federal control, found not unreasonable as compared with lower rate subsequently established by director general to relieve drought conditions. Complainant enjoyed full use of lower rate until it expired by limitation and record is not convincing that commission would have ordered its establishment, as reasonable, if formal complaint had been filed. Moreover, fact that lower rate was not established until after some of complainant's shipments had moved does not change the situation. *Royal Milling Co. v. Director General*, 377.

Proposed revision of rates on paper boxes between points in the Southeast, found justified in part. Complaint against maintenance of commodity rates from Nashville to interior southern points, while class rates apply from Chattanooga, Atlanta, and Birmingham, and in order to satisfy insistent demands for an immediate adjustment on a more consistent and relative basis, and at same time correct existing fourth-section departures, is given as reason for the revision. Proposed rates are intended only as a temporary measure to take care of the situation until such time as all rates on paper and paper articles between points in the Southeast may be revised on a more comprehensive scale. *Paper Boxes between Southeastern Points*, 559.

TERMINALS AND TERMINAL FACILITIES.

While Congress has expressed a policy looking to development of public terminals at port cities, it has not delegated authority to the commission to enforce that policy. Scope of the commission's activities is limited by terms of the interstate commerce act, and unless proposed terminal charges are found to be in contravention of some provision of that act it is beyond the commission's power to condemn them. *Handling Charges on Cement, Fertilizer, and Salt*, 640 (643-644).

Under the law as it now stands carriers are under no obligation to make their terminal charges with a view to insuring a profit upon operations of other public terminals. Nor does it seem to the commission to have been contemplated that the expressed policy of Congress of developing public terminals at port cities is to be carried out by imposing unnecessary expense upon shippers and traffic, which would defeat a policy of real terminal improvement. *Id.* (644).

THROUGH AND LOCAL.

Complaint seeking reparation, as overcharges, based upon violation of aggregate of intermediates provision of section 4 of the act, dismissed following *Portland Seed Co. case*, 264 U. S. 403. While case cited did not involve violations of that clause, the court's reasoning is conclusive as applied to it as well as to long-and-short-haul clause. Published rates must be charged and paid whether lawful or not; and while an unlawful rate may subject carrier to payment of penalties to the Government, its charging does not give shipper any right save to recover "the full amount of damage sustained in consequence of any such violation of the provisions of this act." It would be going too far to find that unauthorized publication established the lower aggregate of intermediate rates as the maximum permissible charge, and only rate which could be demanded. *Pacific Adjustment Co. v. Director General*, 50.

THROUGH AND LOCAL—Continued.

While commission has consistently found that a joint rate that exceeds the aggregate of intermediate rates over the same line or route is *prima facie* unreasonable, it has never found that the charging of such a rate is an overcharge. Moreover, it has always maintained that "the statute requires rigid observance of the tariff, without regard to the inherent lawfulness of the rates specified." *Id.* (52).

Joint rate on furniture from Fort Smith to Jackson found unreasonable to extent it exceeded the aggregate of intermediates to and from Vicksburg. Reparation awarded. *Jackson Traffic Bureau v. A. & V.*, 55.

Rates on steel grinding balls moving water-and-rail from Chrome, N. J., to Ada, Okla., via Galveston, found not unreasonable or in violation of aggregate-of-intermediates clause of section 4 of the act. Tariffs in effect provided for alternative application of maximum rates, whereby rates to Deming, N. Mex., and Clifton, Ariz., would apply if lower than rate to Ada. The Clifton and Deming rates, however, were restricted to routes other than route of movement, and application of the alternative rule was contingent upon specific reference being made to it in connection with rates to destinations in the tariff, and no such reference was made in connection with rate to Ada. Moreover, rate from point of origin to Deming was higher than rate to Ada. *Oklahoma Portland Cement Co. v. A., T. & S. F.*, 203.

Joint rate on gasoline from Salt Lake City to Baker, Oreg., found unreasonable to extent it exceeded the aggregate of intermediate rates to and beyond Weiser, Idaho. Reparation awarded. *Standard Oil Co. v. Director General*, 278.

Joint class E rates on sand from St. Joseph, applicable under the intermediate rule from Turner, Kans., to Bolivar and Cabool, Mo., found unreasonable to extent they exceeded combinations to and from Kansas City. No evidence was presented by defendants to justify rates on basis higher than Kansas City combination. Reparation awarded. *Kaw River Sand & Material Co. v. Director General*, 346.

A joint rate which exceeds the aggregate of intermediate rates is *prima facie* unreasonable. *Id.* (347).

Rates on horses and mules between Fort Worth, and points in Kansas and Missouri found unreasonable to extent they exceeded the aggregate of intermediates contemporaneously in effect. Reparation awarded. *Horse and Mule Rates in the Southwest*, 1924, 479.

Joint rates from points in Florida to Omaha, to which were applied the interterritorial increases of $33\frac{1}{3}$ per cent authorized in *Increased Rates, 1920*, 58 I. C. C. 220, in lieu of the territorial increases based on rates to and from Jacksonville, found not unreasonable or in violation of the aggregate-of-intermediates provision of section 4 of the act. Situation presents a "special and unusual circumstance" sufficient to justify a departure from a strict application of the rule laid down in *Windsor Turned Goods Co.*, 18 I. C. C. 162, that fair measure of reasonableness of a joint rate that exceeds the combination of locals is lowest combination that would apply if the joint rate were canceled. Moreover, it is not a fair application of the rule to condemn these joint rates as unreasonable inasmuch as no compensatory advantage is accorded when the situation is reversed. *Omaha Chamber of Commerce v. A., B. & A.*, 583.

THROUGH AND LOCAL—Continued.

A joint rate does not violate the aggregate-of-intermediates clause of the fourth section unless it exceeds the sum of the rates contemporaneously effective to and from some intermediate point. It can not be said to violate that clause if it must first be broken up into component parts in order to provide rates to and from an intermediate point which are lower in the aggregate, because in such event the basis of comparison is destroyed. *Id.* (585).

A joint rate which does not violate the aggregate-of-intermediates clause of the fourth section may still be unreasonable because it exceeds the through charges which would be applicable in event of its cancellation. *Id.* (585-586).

Rates on empty returned beer packages, c. l. and l. c. l. from eastern points to La Crosse found unreasonable to extent they exceeded the aggregate of intermediates to and from Chicago. Joint rates which exceed the aggregate of intermediates are prima facie unreasonable and evidence in instant case affords an unsatisfactory rebuttal of that presumption. Reparation awarded. *La Crosse Chamber of Commerce v. Director General*, 602.

THROUGH ROUTES AND JOINT RATES.

Overruling Conf. Ruling 341, *Found*: That where a common carrier subject to the act performs an intermediate service in connection with traffic moving at joint rates, it should concur in such joint rates and receive divisions thereof, the divisional arrangements to be so adjusted as to, in effect, result in absorption thereof by line that delivers traffic to carrier performing the intermediate service. *Peoria & Pekin Union*, 3 (22).

Defendants' refusal to establish joint rates on grain and products from the West and South via Bangor, Pa., over certain through routes, with milling in transit at that point, found contrary to public interest and unreasonable. Because of business and transportation practices prevalent in dealing in grain and products, to compete upon an equality complainant requires joint rates with transit at Bangor equal to rates in effect over existing routes through other milling points. Moreover, if joint rates via Bangor are confined to routes involving substantial similarity in service to already existing routes with joint rates, and lawful rights of carriers are preserved, the commission is unable to see that result will be numerous unreasonable requests for extension of transit or that publication of such joint rates will result in undue multiplication of routes or diversification of traffic. *Flory Milling Co. v. C. N. E. Ry.*, 129.

Defendants' refusal to establish joint rates on grain and products from the West and South via Bangor, Pa., over certain through routes, found not unreasonable where fourth section violations would be created, originating carrier short-hauled, or where an additional carrier would be injected without compensatory advantage of the shortened haul. *Id.* (129).

Upon contention that establishment of through routes and joint rates sought would in several instances short-haul carriers participating in existing routes, in violation of section 15 (4) of the act, and in others divert traffic from existing routes without justification and thereby deprive carriers of traffic long enjoyed, *Held*: First objection has no application unless carrier originates the traffic or receives it from a connection, in which event it should be allowed to transport it as far as it can before delivering it to a connecting line. Relative to second objection, it is equally true that a carrier under usual conditions has no existing right to traffic still in possession of connecting lines. *Id.* (134).

THROUGH ROUTES AND JOINT RATES—Continued.

The public interest is not conserved by shutting out, by denial of joint rates, a miller from markets which he can reach by routes not necessitating performance of a greater total service for him than service over present routes over which joint rates apply unless some substantial right of carriers is thereby invaded. On other hand, the commission would clearly not be justified in attempting to neutralize the disadvantage of geographical location by requiring wasteful service or additional service without adequate compensation, although shipper may be in dire need. *Id.* (134).

The commission has power under section 6 (13-b) of the act to establish through routes between rail and water carriers and prescribe maximum rail-and-water and rail-water-and-rail rates over rail and water lines even though water line is not used under a common control, management, or arrangement for continuous carriage or shipment. *Houston Cotton Exchange v. A. & A. R. R. Corp.*, 268.

Contention that section 15 (3) and section 6 (13), (13a), and (13b) of the act are qualified by section 1 (1a) so that they relate to transportation partly by rail and partly by water only when both are used under a common control, management, or arrangement for a continuous carriage or shipment, not sustained. This would lead to absurd conclusion that commission is enabled to establish a physical connection at a dock between a rail carrier and a water carrier only where water carrier already has an arrangement for continuous service with the rail line. *Id.* (270).

TITLE-PAGE.

Statements on title-pages of tariffs which are general in nature should not be given narrow constructions as to defeat specific provisions contained in bodies of the issues. *Armour Fertilizer Works v. S. Ry.*, 186 (187).

TOLLAGE CHARGES.

Domestic class rate, which included absorption of part of tollage charges at New Orleans, on imported flint pebbles shipped to Dewey, Okla., assessed as a result of cancellation of import commodity rate on account of no movement, under general policy of director general with respect to unused rates, found unreasonable as compared with import rate to Kansas City, a farther distant point, which rate included absorption of all tollage charges and was subsequently established to Dewey. Reparation awarded. *Dewey Portland Cement Co. v. A., T. & S. F.*, 311.

TOLLS. *See* CONSTRUCTIVE MILEAGE.

TON-MILE REVENUE. *See* EARNINGS.

TRACKAGE CHARGES.

Aggregate of line-haul rates and trackage charges for use of tracks during period cars remain in hold yards awaiting delivery to elevators at Texas City, Tex., on export grain from points in Missouri, Iowa, Minnesota, Nebraska, Kansas, Colorado, and Oklahoma found unreasonable to extent they exceeded such line-haul rates exclusive of trackage charge. Reparation awarded. *Armour Grain Co. v. A., T. & S. F.*, 124.

TRANSCONTINENTAL TRAFFIC.

Express rate on cantaloupes from Turlock, Calif., to New York and Boston found unreasonable and unduly prejudicial to extent it exceeded rates contemporaneously applicable from Brawley, Calif., and other Imperial Valley points. A blanket rate on fruits and vegetables applies from all California producing points to certain eastern cities and no justification appears for higher rates from Turlock on cantaloupes, when Brawley and Turlock take same rates on other commodities, especially in view of the slight differences in distance for long hauls here considered. Moreover, transcontinental rail carriers provide same rates from both points on cantaloupes, melons, and other commodities to New York and Boston. Reasonable rates prescribed and reparation awarded. *Gentile Co. v. Am. Ry. Exp.*, 76.

Proposed establishment of commodity rate lower than prevailing class basis on insulators from Emeryville, Calif., and other western points to transcontinental Groups F to J, inclusive, found justified. Considering extensive areas of the respective groups, proposed rate is not materially out of line with rates from Macomb, Ill., and other eastern producing points. *Eastbound Transcontinental Rates on Insulators*, 282.

TRANSIT ARRANGEMENTS.

In General:

Mere fact of participation by carrier in joint rates in connection with which transit is allowed at points on other lines does not make it guilty of undue prejudice against shippers or localities on its own line. *C. R. R. Co. v. U. S.*, 257 U. S. 247. *Lange & Crist Box & Lbr. Co. v. B. & O.*, 207 (208).

Complaint sought establishment of transit arrangements on line of a certain carrier. Contention of such carrier that commission can not make any order in such cases affecting traffic moving from origins or to destinations on other lines, found without merit, since transit arrangements are treated as matters local to line on which transit point is situated. *C. R. R. Co. v. U. S.*, 257 U. S. 247. *Id.* (208).

Dressing: Failure of B. & O. to accord wire-bound box material dressing-in-transit arrangements at Clarksburg, W. Va., on traffic originating on its line in West Virginia to interstate destinations on its line, while according such arrangements at Cincinnati, at which competitors are located, found to result in undue prejudice. *Lange & Crist Box & Lbr. Co. v. B. & O.*, 207.

Milling:

Defendants' refusal to establish joint rates on grain and products from the West and South via Bangor, Pa., over certain through routes, with milling in transit at that point, found contrary to public interest and unreasonable. Because of business and transportation practices prevalent in dealing in grain and products, to compete upon an equality complainant requires joint rates with transit at Bangor equal to rates in effect over existing routes through other milling points. Moreover, if joint rates via Bangor are confined to routes involving substantial similarity in service to already existing routes with joint rates, and lawful rights of carriers are preserved, the commission is unable to see that result will be numerous unreasonable requests for extension of transit or that publication of such joint rates will result in undue multiplication of routes or diversification of traffic. *Flory Milling Co. v. C. N. E. Ry.*, 129.

TRANSIT ARRANGEMENTS—Continued.

Milling—Continued.

Milling in transit of grain, grain products, and commodities entering into the manufacture of mixed feeds at joint rates has become such a widely diffused and common practice, due in large extent to voluntary act of carriers, that any manufacturer not accorded transit under joint rates is at a substantial disadvantage which will confine his opportunities of sale to limited areas. *Id.* (133-134).

Rates on wheat from various points in Kansas and Colorado, to Leavenworth, Ft. Leavenworth, and Atchison, Kans., and St. Joseph, Mo., milled in transit at Kansas City, Mo.-Kans., found unreasonable and unduly prejudicial to extent they exceeded contemporaneous through rates from and to same points on which milling in transit is allowed at points west of Kansas City. Reasonable rates prescribed and reparation awarded. *Rodney Milling Co. v. M. P.*, 200.

It is not the commission's function to equalize milling costs. *Stuttgart Rice Mill Co. v. A. & V. Ry.*, 517 (528).

Milling, Storing, etc.; Maintenance of reshipping rates on grain and products to and from Memphis without contemporaneously maintaining similar rates to and from Mississippi points found not unduly prejudicial, but in so far as the rules, regulations, and practices under which grain or its products may be stopped at Memphis for milling, storing, or other transit services and later reforwarded at less than sums of local rates to and from Memphis, are more favorable than rules, regulations, and practices under which transit service is accorded at Mississippi points, they are unduly prejudicial. *Mississippi R. R. Commission v. A. & V.*, 435.

Storage: Fifth-class rates assessed on sisal from Indianapolis to certain points in c. f. a. territory, western New York, and Ontario, Canada, found not unreasonable. Shipments here involved represented the reshipment of sisal imported via Gulf ports and held in storage at Indianapolis beyond the transit period. Had they been shipped out from transit point within transit period they would have been entitled to joint rates from the ports to ultimate destination, plus transit charge. Complainant did not attack the rating or class rates as such but in effect sought extension in some degree of benefit of the storage-in-transit arrangement to shipments made after expiration of the transit period. Similar proposals, however, were found not justified in 73 I. C. C. 455 and 78 I. C. C. 575. *Sisal Sales Corp. v. B. & O.*, 297.

TRANSPORTATION CONDITIONS. *See* OPERATING AND TRANSPORTATION CONDITIONS.

TWO-FOR-ONE.

Large car ordered but carrier furnished two small cars for its own convenience. Charges collected at c. l. rate, based on applicable minimum on first car, and at actual weight on second car, found illegal, as exceptions to classification provided that where carrier furnishes two small cars in lieu of larger car ordered, charges should be assessed at actual weight, subject to minimum for car ordered. Complainant's shipment exceeded this minimum and could have been loaded in car ordered. Shipment found overcharged and reparation awarded. *Goodpasture v. N. C. & St. L.*, 65.

UNCLAIMED SHIPMENTS. *See* REFUSED AND UNCLAIMED SHIPMENTS.UNDERCHARGES. *See* LEGAL RATES.UNDESIRABLE TRAFFIC. *See* DESIRABLE AND UNDESIRABLE TRAFFIC.

UNWEIGHED SHIPMENTS. *See* WEIGHTS AND WEIGHING. USE.

The commission has repeatedly refused to sanction different rates based upon use to which a commodity is put. *Lockport Paper Co.*, 87 I. C. C. 347, 349. *Musto Sons-Keenan Co. v. S. P. Co.*, 447 (448).

Contention that whole shells used in making buttons may properly take higher rates than crushed shells, a waste product used principally for mixing in poultry feed, not sustained. Such contention lays emphasis on use made of an article, a basis upon which the commission has repeatedly refused to sanction different rates. *Pioneer Pearl Button Co. v. St. L.-S. F.*, 599 (601).

There is a clear distinction between making different rates for application between same point on same commodity conditioned solely upon use to which the commodity is to be put, a practice which the commission has frequently condemned, and making different rates on different commodities and taking into consideration, along with other factors, the general use to which respective commodities are put for purpose of determining the applicable rate. *Lime from Eastern Trunk Line Points*, 617 (630).

VALUE OF COMMODITY.

Fact that an article has a wide range of value, in and of itself, is insufficient to warrant establishment of released rates, because loss and damage claims on that article may be negligible in any event. *Released Rates on Stone in Southeast*, 90 (93).

Value of commodity transported is an element in rate making aside from risk of loss or damage, because it serves to measure value of service rendered the shipper. *Id.* (94).

In establishing reasonable rates value of commodity to be rated must be considered. *Jackson Traffic Bureau v. B. & O.*, 342 (343).

VOLUME OF TRAFFIC.

Regardless of volume of movement, shippers are entitled to reasonable rates on their shipments. *Cleveland Akron Bag Co. v. W. & L. E.*, 694 (696).

VOLUNTARY REDUCTION. *See* REDUCTION IN RATES (BY CARRIERS).

WAR TAXES.

The commission is without power to order refund of war taxes. *McClintick & Co. v. P. M.*, 69 (70).

WASTEFUL TRANSPORTATION.

Commission would not be justified in attempting to neutralize disadvantages of geographical location by requiring wasteful or additional service without adequate compensation, although shipper may be in dire need. *Flory Milling Co. v. C. N. E. Ry.*, 129 (134).

Divisions and allowances accorded *Christie & Eastern Ry.*, a common-carrier tap line, by trunk-line connections, out of joint rates on lumber and forest products, found not unjust, unreasonable, inequitable, or otherwise unlawful. The *Christie* originally connected with but a single trunk line at Sandel but by extending its service under trackage rights additional outlets were established at *Lecompte* and *Long Leaf*. *Held*: Hauling traffic through *Long Leaf* or *Lecompte*, instead of to less distant connection at Sandel, is an unnecessary and uneconomic service and not in the public interest. Service, as extended, falls under the ban of inefficiency since it entails a burden of expense voluntarily assumed which can not be overcome by increased volume of traffic. Moreover, such unnecessary expense should not be offset by depleting revenues of trunk-line connections. *Christie & Eastern Ry. v. K. C. S.*, 675.

WATER-AND-RAIL. See RAIL-AND-WATER.

WEIGHTS AND WEIGHING. See also MINIMUM WEIGHT.

Charges, based on estimated weight of green lumber, collected on shipment of yellow-pine lumber found inapplicable to extent they exceeded charges based on estimated weight of dry lumber. Shipment here involved was accumulated in complainant's yard over a period of six months, and notwithstanding absence of any definite rule which may be followed in determining when lumber passes from green to dry stage, material comprising this shipment may not be classed as green lumber, and was therefore subject to estimated weight on seasoned lumber. Shipment found overcharged and reparation awarded. *Leake & Goodlett v. St. L.-S. F.*, 73.

No track scales were located at either loading or unloading point, and no tariff provision was made for ascertaining weights of gravel shipped in unweighed cars. Charges assessed on shipments not weighed or measured, based upon an unfiled circular issued by carrier to station agents and conductors, which provided for use of certain estimated weights on this commodity when shipped under above conditions, found legally applicable. Practice of carriers in issuing circulars respecting use of estimated weights on unweighed shipments was considered by commission in *Weighing of Freight by Carriers*, 28 I. C. C. 7, and not condemned. Moreover, unless these rules are incorporated in tariffs they are not usually filed with regulatory bodies. *Becker County v. Director General*, 368.

WHARFAGE.

Upon consideration of matters involved in the investigation instituted by commission on its own motion into reasonableness of wharfage, handling, storage, and other accessorial services at south Atlantic and Gulf ports, *Found*: In view of numerous instances of overlapping of competitive conditions affecting traffic handled through north and south Atlantic ports raising questions that can not be satisfactorily disposed of by limiting the proceeding to south Atlantic and Gulf ports, such proceeding reopened and its scope broadened to include all Atlantic and Gulf ports. *Wharfage Charges at South Atlantic and Gulf Ports*, 609.

Following *Handling Charges at Louisiana Ports*, 61 I. C. C. 379, combined wharfage and handling charges on kerosene, in cases, at New Orleans, found unreasonable for future to extent it exceeds 3.5 cents per 100 pounds. *Id.* (613).

Proposed reduced charges for handling fertilizer, fertilizer materials, cement, and salt at south Atlantic and certain Gulf ports, found justified. Present charges are so high that they have resulted in practices by shippers which obviate the necessity for railroad handling of these commodities and a consequent heavy loss of revenue. Proposed charge is not unreasonably high nor is there warrant for holding that it is unduly prejudicial. Moreover, cost figures submitted by carriers while tending to show that reduced charges will probably not cover all costs if cost is to be ascertained by distributing all burdens over all traffic, indicate that they will produce considerable return in excess of direct out-of-pocket costs of the services. *Handling Charges on Cement, Fertilizer, and Salt*, 640.

It does not follow from fact that the commission has approved increases in handling charges at certain ports that a lower basis of charges would have been unlawful. Carriers may, subject to certain restrictions, initiate rates lower than commission may prescribe. The question is as to whether or not they are proposing to go to such lengths in attempting to meet competition and attract business that resulting charges will be so low as to create a burden upon other traffic. *Id.* (644).

WHARFAGE—Continued.

Proposed change in rule defining service of handling at south Atlantic and certain Gulf ports, found justified. No increases or decreases will result from the proposed new section which does not change substance of the existing rule but merely clarifies its application in so far as handling between ship side and box cars is concerned, and also makes clear that no charge will be assessed in connection with shipments transferred by ship's tackle to or from open-top cars standing on marginal tracks at ship side. *Id.* (645).

WORDS AND PHRASES.

"All-rail route": Strictly speaking, a car-ferry route is an "all-rail" route. *Bergstrom Paper Co. v. Director General*, 591 (592).

"Bars": Bars, as well as rods, may be straight, crooked, bent, curved, deformed, and presumably may be coiled. *New England Drawn Steel Co. v. Director General*, 171 (172).

"Bicycle": A bicycle is neither a freight nor a passenger vehicle. *United Cycle & Supply Co. v. B. & O.*, 689 (690); *Jones v. P. R. R.*, 697 (698).

"Car-ferry route": Strictly speaking, a car-ferry route is an "all-rail" route. *Bergstrom Paper Co. v. Director General*, 591 (592).

"Car shortage": Report of American Ry. Asso. conference committee to United States Coal Commission, defining what constitutes a "car shortage." *Assigned Cars for Bituminous Coal Mines*, 701 (731).

"Cucumbers": Contention that cucumbers in brine were not pickles but were only packed in salt solution to facilitate transportation to a point where they could be manufactured into pickles not sustained, since some shipments moved several months after the gathering season and must have been in brine sufficiently long to remove them from category of fresh cucumbers. *Haarmann Vinegar & Pickle Co. v. C., B. & Q.*, 251 (252).

"Facilities possessed": Private cars which are paid for by carriers for use and are used on their lines are clearly "facilities possessed," and come within broad powers conferred upon commission by the statute to prevent unjust discrimination. *Assigned Cars for Bituminous Coal Mines*, 701 (730).

"Handling": Proposed change in rule defining service of handling at south Atlantic and certain Gulf ports, found justified. No increases or decreases will result from the proposed new section which does not change substance of the existing rule but merely clarifies its application in so far as handling between ship side and box cars is concerned, and also makes clear that no charge will be assessed in connection with shipments transferred by ship's tackle to or from open-top cars standing on marginal tracks at ship side. *Handling Charges on Cement, Fertilizer, and Salt*, 640 (645).

"Pickles": Contention that cucumbers in brine were not pickles but were only packed in salt solution to facilitate transportation to a point where they could be manufactured into pickles not sustained, since some shipments moved several months after the gathering season and must have been in brine sufficiently long to remove them from category of fresh cucumbers. *Haarmann Vinegar & Pickle Co. v. C., B. & Q.*, 251 (252).

"Rail-lake-and-rail route": Ordinarily expression "rail-lake-and-rail route" is used to describe a rail-and-water break-bulk route. *Bergstrom Paper Co. v. Director General*, 591 (592).

WORDS AND PHRASES—Continued.

"Served": Upon contention that under section 1 (12) of the act the commission has no jurisdiction over distribution of cars to carrier-owned or output-contract mines which furnish railway fuel exclusively for at least six months, because such mines are not "served" by a carrier, *Held*: Word "served" has no judicially determined or technical meaning which would make it inapplicable to such mines. The commission believes that Congress intended to use the word in its ordinary and well-accepted meaning; i. e., to mean the furnishing of cars by a carrier at its own mines or at those the output of which it takes. As used in paragraph (12) "served" is a convenient term to show that provisions of this paragraph apply not only to mines located on a carrier's own line, regardless of ownership or contractual arrangements, but also to those mines located off its line and which it customarily supplies with cars. *Assigned Cars for Bituminous Coal Mines*, 701 (714-715).

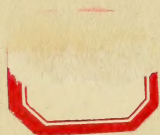
"Shipper": An individual miller is a shipper and entitled to reasonable rates, rules, and regulations measured in light of business and transportation practices in the industry in which he is engaged. *Flory Milling Co. v. C. N. E. Ry.*, 129 (133).

"Stringpiece" is the raised outer edge of a dock. *Coastwise Lumber & Supply Co. v. P. R. R.*, 288 (289).

"Stringpiece delivery": It is duty of carrier in making "stringpiece" delivery of lumber from lighters or barges to pass lumber over the stringpiece to assigned space on the dock or to consignee. It is not required that lumber be piled symmetrically, that it be tiered, or that ends of pieces be even, but at least the various pieces must be approximately parallel lengthwise. No obligation rests upon carrier to place men upon a dock to receive lumber except to extent necessary to effect delivery thereof in a safe and orderly manner. *Coastwise Lumber & Supply Co. v. P. R. R.*, 288 (295).

"Transportation": The word "transportation" as used in section 1 (12) of the act is not limited in its meaning to transportation for compensation, but includes also transportation of carrier's own coal over its line. *Assigned Cars for Bituminous Coal Mines*, 701 (715).

93 I. C. C.







UNIVERSITY OF ILLINOIS-URBANA



3 0112 105101098